

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI
(Court No.2)**

O.A. No.457 of 2011 & M.A. No.415 of 2011

IN THE MATTER OF:

HAV. RAJBIR KAUSHIK

.....APPLICANT

Through: Mr. K. Ramesh & Ms. Archana Ramesh, counsels for the
applicant

VERSUS

UNION OF INDIA AND OTHERS

.....RESPONDENTS

Through: Mr. Mohan Kumar, counsel for the respondents

CORAM:

**HON'BLE MR. JUSTICE MANAK MOHTA, JUDICIAL MEMBER
HON'BLE LT. GEN. M.L. NAIDU, ADMINISTRATIVE MEMBER**

JUDGMENT

Date: 07.05.2012

1. This O.A. was filed before this Tribunal by the applicant on 20.10.2011. Vide this OA, applicant has sought quashing and setting aside of the discharge order dated 31.08.2005 by which he was discharged being a case of LMC P-3 (P). Further, he has prayed for reinstatement in service with all consequential benefits. Along with the present OA, applicant has also filed a MA for condonation of delay on the ground that the applicant agitated for review of the discharge order only after he came to know the decision of Hon'ble Supreme Court given in the case of **Union of India Versus Nb. Sub. Rajpal Singh**

(2009) 1 SCC 216 wherein the discharge on medical grounds without holding IMB was quashed, which attained finality.

2. The brief facts of the case are that the applicant was enrolled in Indian Army on 05.08.1988. During his services, on 02.07.2004 he was downgraded and declared an LMC for "Generalised Seizure". Subsequently, he was made a Permanent Low Category for the same disease. On 31.08.2005 he was discharged being LMC P-3 (P). It is further submitted that thereafter, he filed a statutory complaint/representation on 19.07.2010 and it is alleged that the same has not yet been disposed of.

3. Considering the facts of the case, at admission stage, we have heard both the parties and perused the record. During the course of submission, learned counsel for the respondents raised objection while stating that present application filed by the applicant is time barred as applicant was discharged in 2005 and he has filed the present application in 2011. He further stated that grounds taken for condonation of delay by the applicant are not legally sustainable. He contended that there is no coherent explanation of delay of six years in filing the present petition. As per provision of Section 22 of the Armed Forces Tribunal Act, 2007, application has to be filed within three years from the accrual of cause of action and in this case the cause of action arose in 2005, however he has approached this Hon'ble Tribunal in 2011. He further contended that merely by filing representation that

too at belated stage, limitation will not survive. He also referred decision of Hon'ble Supreme Court given in the case of **Union of India and Others Versus M.K. Sarkar (2010) 2 SCC 59**. Therefore, it was contended that without going into the merits of the case, this case should be dismissed.

4. It is was further contended by learned counsel for the respondents that this Hon'ble Tribunal, in the similar situated cases i.e. **Nk Narendra Kumar Versus Union of India & Others (OA No. 262/2010)** decided on 08.11.2010, **Risaldar Ram Karan Singh Versus Union of India and Others (TA No. 229/2009)** decided on 21.09.2011 and **Rifleman Ram Bahadur Thapa Versus Union of India & ors. (OA No. 176/2011)** decided on 04.10.2011, wherein persons were discharged in 2000, 2006 and 2007 on the ground of LMC (P), dismissed the petitions. The decisions given by the Tribunal in the case of **Risaldar Ram Karan Singh (Supra)** and in case of **Rifleman Ram Bahadur Thapa (supra)** were upheld by the Hon'ble Delhi High Court.

5. We have also heard learned counsel for the applicant. He submitted that applicant was wrongly discharged in 2005 without holding an IMB. It was also contended that it is a continuous wrong. He further argued that after the decision given in the case of **Union of India Versus Nb. Sub. Rajpal Singh (Supra)**, applicant has agitated the matter, therefore, delay in filing the present OA should be condoned.

6. We have considered the rival submissions and perused the record. Admittedly, petitioner was discharged in 2005 being a LMC P-3 (P), thereafter for the first time he made a statutory complaint/representation on 19.07.2010 after almost a period of five years. Thereafter he filed the present OA on 20.10.2011 admittedly after a lapse of more than six years from the arisen of the cause of action.

7. In our opinion, the cause of action to challenge applicant's discharge, which is a complete act, arose in 2005 and thereafter merely by filing a representation, limitation will not save. Though an application has been filed with the OA for condonation of delay but the grounds stated in the application are not convincing. Section 22 of the Armed Forces Tribunal Act 2007 prescribed limitation of 3 years to challenge the impugned order. The present O.A. is time barred. Our conclusion finds support by the decision given by the Hon'ble Supreme Court in the case of **Union of India and Others Versus M.K. Sarkar (Supra)** and decision given by this Tribunal in case of **ERA Rakesh Kumar Aggarwal Vs. Union of India & Ors.** in O.A. No.55/2012 on 17.02.2012.

8. We have also considered the other facts. In this case, the applicant was discharged as LMC case in the year 2005, admittedly not under the policy of 12.04.2007 and no petition was pending before any

Court at the time of verdict given in case of **Sub. (SKT) Puttan Lal Vs. Union of India & Ors.** W.P.(C) No.5946/2007 on 20.11.2008 by the Hon'ble Delhi High Court. As per directions given in **Puttan Lal's** case (supra), the applicant is not entitled for reinstatement.

9. In similar cases the Hon'ble Court No.1 of this Tribunal in case of **ERA Rakesh Kumar Aggarwal Vs. Union of India & Ors.** in O.A. No.55/2012 decided on 17.02.2012, where the impugned order was of 2004 and the O.A. was filed in the year 2012. The O.A. was held time barred. In case of **Rifleman Ram Bahadur Thapa vs. Union of India & Ors.** in O.A. No.176/2011 decided by this Tribunal on 19.10.2011, wherein the petitioner, who was discharged on 01.01.2007 filed a petition in the year 2011. It was held time barred. The applicant again approached to Hon'ble Delhi High Court in W.P.(C) No.586/2012, which was decided on 30.01.2012, wherein a contention was also raised of continuing wrong by the petitioner, but it was not accepted by the Hon'ble High Court and in that judgment the decision of **Union of India Vs. Tarsem Singh** (2008) 8 SCC 648 was held to be apparently distinguishable. The Hon'ble Court, in this respect, observed as under:

“16. Therefore, it cannot be held that the defense of laches will not be applicable for the claim that the petitioner could not be boarded out without holding an Invalidation Medical Board. The case of Tarsem Singh (supra) is apparently distinguishable and the petitioner cannot place reliance on the same to claim his relief.”

10. The same view was taken by this tribunal in the decisions given in *Risaldar Ram Karan Singh Vs. Union of India* decided on 21.09.2011 in T.A. No.229/2009 and *Rifleman Ram Bahadur Thapa Vs. Union of India & Ors.* in O.A. No.176/2011 decided on 19.10.2011 and said the decisions were also maintained by the Hon'ble Delhi High Court.

11. Considering facts in totality, there are no grounds to interfere in the impugned order.

12. In view of aforesaid discussion, the O.A. as well as the M.A. filed by the applicant are dismissed. No order as to costs.

(M.L. NAIDU)
(Administrative Member)

(MANAK MOHTA)
(Judicial Member)

Announced in the open Court
on this 7th day of May, 2012
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