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**COURT NO. 3, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
O.A. No. 506 OF 2010**

IN THE MATTER OF :

Ex. AC Sushant Kumar Kanungo

.....Applicant

VERSUS

Union of India & Ors.

.....Respondents

Dated: 30.09.2011

Present: Mr. J.S. Mann, counsel for the Applicant

Mr. Satya Saharawat, proxy counsel for Mr. Ankur Chhibber,
counsel for the Respondents

MA No. 27/11 IN OA No. 506/10

Heard and perused the record.

This application has been filed on behalf of applicant seeking condonation of delay in filing the original application. Learned counsel for the applicant submits that initially appeal was filed to the appropriate authority in 1994 and thereafter continuous reminders in the shape of appeal were filed but the same were not disposed of. Learned counsel has filed postal receipt in support of his contention. He further submits that ultimately in the year 2009 appeal was disposed of on merits. On the basis of this, submission is made that considering the time consumed in disposing of the appeal, his present application be allowed and delay may be condoned in filing the original application.

We have heard both the parties and seen the latest order of disposal of appeal conveyed to the applicant which states that appeal filed in 2009 has been disposed of on merits. Considering the facts of the case and

submissions made, we grant provisional permission to admit the present case. Respondent side is free to take objections with regard to limitation. Application stands disposed of accordingly. Record of the MA be attached with the main file.

MA No. 293/11 IN OA No. 506/10

This application has been filed on behalf of the applicant for bringing additional documents on record. We have heard both the parties. Considering the submissions and facts of the case, application is allowed. Additional document filed by the applicant be taken on record. Application is disposed of accordingly.

OA No. 506/10

Considering the facts of the case and submissions made, we think it is a fit case to issue notice. Hence let notice be issued to the respondents why the application not be admitted. Learned proxy counsel appearing on behalf of the respondents accepts the notice. No need to issue the same. He wants time to file the reply. As prayed, four weeks time is granted with direction to supply advance copy of the reply to the applicant. The applicant is free to file the rejoinder within the further period of two weeks, if he so wishes. On the next date of hearing, record with regard to disposal of appeal be kept ready for perusal. Put up on **22.11.2011**.

Z.U. SHAH
(Administrative Member)
Dated: 30.09.2011
mk

MANAK MOHTA
(Judicial Member)

→ C/A & R/A not filed.

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI
25.**

O.A. No. 506 of 2010

Ex AC Sushant Kumar Kanungo

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. J.S. Mann, Advocate.

For respondents: Mr. Ankur Chhibber, Advocate

CORAM:

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

HON'BLE LT. GEN. M.L. NAIDU, MEMBER.

ORDER

13.07.2012

1. Petitioner vide this petition has prayed to set aside order of dismissal of the petitioner from Air Force service dated 01.05.2009 passed by AOC-in-C HQ SWAC and the order dated 07.09.2009 whereby appeal of the petitioner has been rejected as intimated to him vide letter dated 03.12.2009. It is also prayed that directions be issued to the respondents to reinstate the petitioner with immediate effect with back wages and other consequential benefits.

2. Petitioner was inducted in the Indian Air Force as an airman on 11.05.1990 after obtaining qualification of 10+2. He had joined the Air Force with great aspirations and was proud of his service. Upon successful completion of his training he was assigned the trade of MTD and was posted to 10 Squadron AF. He discharged his duties with utmost dedication and loyalty. However due to one reason or another, he could not be attested and a show cause notice was issued to him on 03.03.2003. He replied the said show cause notice on 04.03.2003. Thereafter he was dismissed from service vide order dated 07.05.1993. Thereafter it is alleged that petitioner submitted an appeal before the Chief of Air Staff on 30.05.1994 for considering his case

with due compassion and for reinstate which was followed by reminders dated 30.10.1996, 04.03.1999, 11.07.2001, 18.11.2003, 20.04.2006 and finally on 07.09.2009. Ultimately, his appeal was disposed of vide order of Air HQ dated 03.12.2009 whereby his appeal was rejected. Hence, the petitioner filed the present petition seeking aforesaid relief.

3. A question of delay was raised by the respondents. Petitioner filed his appeal to the Respondents in 1994 which was ultimately disposed of by the respondents in 2009. Considering this inordinate delay in disposing of the appeal of the petitioner, co-ordinating bench vide order dated 30.09.2011 condoned the delay. Now the petition has come for final disposal.

4. A reply has been filed by the respondents and they contested the matter. It is pointed out that petitioner was not attested. He was given a show cause notice on 03.03.2012 and reply to the same was not satisfactory. Therefore, petitioner was dismissed from service.

5. We have heard both the parties and gone through the record.

6. Learned counsel for the petitioner pointed out that petitioner after his dismissal obtained higher educational qualifications of B.A. (Hons.) and M.A. (Political Science) from Utkal University and LLB from MS College, Katak. He further acquired qualification of M. Phil in Political Science on the subject of International Relations on African Context on the topic of "the role of South African Human Rights Commission in post apartheid era" from University of Delhi and obtained second position in the University. The petitioner is undergoing Ph.D in Political Science from University of Delhi on the topic entitle "National Human Rights Commission in India and South Africa: A Comparative Study in Institutional Effectiveness". He has also done Master of Law in 2011 from North Orissa University.

7. Learned counsel for the petitioner argued that the dismissal order dated 07.05.1993 is very harsh on the petitioner and it will always come in his way in obtaining civil employment. He prays that since the petitioner after his dismissal from air force acquired higher educational qualifications, his dismissal may be converted into discharge.

8. The para 9 of Air Force Order 227/77 stipulates that personnel who refuse to be attested are to be released/removed/dismissed. It however indicates lack of allegiance to the constitution. There are three contingencies laid down vide para 9 of AFO 227/77 which contemplates that one has to be released or removed or dismissed from service. In the present case there appears to be some misunderstanding. It appears to be surprising that despite serving for a long time, petitioner was not attested which should have been done after completion of training. However we do not want probe this matter any further. Suffice it to say that it will meet ends of justice if dismissal of the petitioner is converted into discharge as that will not spoil the career of the petitioner for obtaining civil employment. Hence, in view of above we convert dismissal of service of petitioner into discharge and hold that dismissal order dated 07.05.1993 will not come in his way to obtain civil employment and it would be treated as discharge.

9. Consequently, we partly allow the petition. No order as to costs

A.K. MATHUR
(Chairperson)

M.L. NAIBU
(Member)

New Delhi
July 13, 2012
mk