

COURT No. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
(Through Virtual Hearing)

RA20/2022 with MA 1265/2022 in OA 1893/2017

Ex ERA-3 Braham Dutt KhullarApplicant

Versus

Union of India & Ors.Respondents

For Applicant : Ms. Archana Ramesh, Advocate.

For Respondents : Mr. K.K.Tyagi, Advocate

CORAM:

HON'BLE MS.JUSTICE SUNITA GUPTA, MEMBER (J)

HON'BLE LT. GEN. BOBBY CHERIAN MATHEWS, MEMBER (A)

ORDER

MA 1265/2022

Vide this order, we proposed to dispose of two MAs bearing MA No.1265/2022 vide which the applicant seeks condonation of delay of 966 days in filing the review application in terms of Section 14(4) (F) of the Armed Forces Tribunal Act, 2007 read in conjunction with Rule 18 and 25 of the Armed Forces Tribunal (Procedure) Rules, 2008 and RA 20 of 2022 vide which the applicant seeks review/modification of the order dated 05.07.2019.

We have heard Ms. Archana Ramesh, Advocate for the applicant and Mr. K.K.Tyagi, Advocate for the respondents and has perused the record.

First of all, we shall take up MA 1265/2022. It is submitted by the learned counsel for the applicant that the application for review was required to be filed within 30 days from the date of judgment, i.e., 05.07.2019 implying that the Review Application should have been filed by 04.08.2019 and the same has

been filed on 25.03.2022. As such, there is delay of 2 years 7 months and 21 days. It is submitted that the applicant was out of station for urgent domestic issue as also some property issues and returned to New Delhi only on 15 March 2022 to give instructions to the counsel to file a Review Application and the delay is bonafide. Reliance has placed on the judgment passed by Hon'ble Supreme Court in **Union of India and others versus Tarsem Singh** (2008) 8 SCC 648, **Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai, N. Balakrishnan Vs. M. Krishnamurthy**, (1998) 7 SCC 123 for submitting that the delay be condoned.

Learned counsel for the respondents, on the other hand, submitted that no sufficient ground has been assigned by the applicant for condonation of delay in filing the application.

As per Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008, limitation for filing an application for review is 30 days from the date of receipt of copy of the order. The order was passed on 05.07.2019. As such, the application for review was required to be filed on 04.08.2019. However, it has been filed on 25.03.2022. As such, admittedly, there is delay of 02 years and 07 months and 21 days in filing the application. Rule 18 does not provide for condonation of delay in filing application for review.

Even if it is taken that a liberal view should be taken in view of the judgment relied upon by the learned counsel for the applicant. It is to be seen whether the applicant has been able to assign any sufficient cause for delay in filing the application. The grounds attributed for delay in filing the application are that the applicant was out of station for urgent domestic and property issue

and returned to Delhi only on 15.03.2022. The averments are very vague and it is not alleged when the applicant went out of station and what was the domestic and property issue which prevented him from giving instructions to the counsel to file the application. The mere fact that the applicant returned to Delhi only on 15.03.2022 does not extend the period of limitation as the applicant by his own acts cannot extend the period of limitation. Rather the averments made in the application goes to show that a very casual attitude has been adopted by the applicant in filing the application. Even in **N. Balakrishnan's** case (supra) relied upon by the learned counsel for the applicant, it was observed by the Hon'ble Supreme Court as under:-

“Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. the object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort

to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time."

As seen above, the applicant has failed to show any ground much less the sufficient grounds for delay in filing the application and there are no cogent grounds for condonation of delay in filing the application. As such, application is liable to be dismissed.

Even if it is taken that a liberal approach is required to be taken, even then it is to be seen whether there is any ground for review of the order.

RA20/2022

The applicant seeks review/ modification of the judgment dated 05.07.2019, inter-alia, on the ground that the applicant filed O.A. 1893 of 2017 for grant of disability pension from the date of his discharge till date. The respondents had opined the disability **Epilepsy** as NANA i.e., neither attributable nor aggravated by military service and quantified it as 40% for a period of 2 years. The OA was partially allowed and the applicant granted disability pension for two years at 40%. It is submitted that the Tribunal has relied upon the Apex Court judgment in Civil Appeal No. 5605 of 2010 in Re: **Sukhvinder Singh** versus **Union of India** dated 25.06.2014. It is further submitted that now for disability pension whether it is for 2 years or life, is covered by Hon'ble Supreme Court judgment in Civil Appeal 5970 of 2019 in Re: **Commander Rakesh Pandey** vs. **Union of India** where it was held as under:-

“The learned counsel for the appellant referred to a letter dated 07.02.2001 of the Government of India which dealt with the modalities for implementation of the recommendations of the 5th Central Pay Commission. The assessment with regard to percentage of disability as recommended by the Release Medical Board was dealt with in the said letter. The assessment made by the Medical Board shall be treated for life except in case of disability which is not of permanent nature, unless the individual requests for a review. So therefore, this disability is for life.”

It is submitted that there is a minor mistake apparent on the face of record which is required to be modified to meet the ends of justice.

Learned counsel for the respondents however submitted that the applicant cannot take benefit of the judgment passed by Hon'ble Supreme Court in **Rakesh Pandey's** case. The impugned order was passed on 05.07.2019 whereas the Hon'ble Supreme Court passed the judgment on 28.11.2019. Therefore it is submitted that there is no error apparent on the face of the record which warrants review of the order.

In this regard, learned counsel for the applicant although admitted that the judgment in **Rakesh Pandey's** case was delivered by Hon'ble Supreme Court subsequent to the passing of the order in the present case, however, it is submitted that the judgment was basically passed on a letter dated 07.02.2001 of the Government of India which dealt with the modalities for implementation of the

recommendations of the 5th Central Pay Commission. The assessment with regard to percentage of disability as recommended by the Release Medical Board was dealt with in the said letter. The assessment made by the Medical Board shall be treated for life except in case of disability which is not of a permanent nature, unless the individual requests for a review. It was further observed that para 7 of the letter dated 07.02.2001 provides that no periodical review by the Resurvey Medical Boards shall be held for reassessment of disabilities. As such it is submitted that since this letter dated 07.02.2001 was already in force when the impugned order was passed, therefore, the order requires to be modified.

Needless to say, scope of review is very limited. In order to seek review of the order, it is incumbent upon the applicant to show that there is any error apparent on the face of the record which warrants review of the order. There is force in the submission of learned counsel for the respondents that the present application has been filed by the applicant on the basis of the judgment passed by the Hon'ble Supreme Court of India in **Rakesh Pandey's** case (supra) which admittedly was delivered after the impugned order was passed. Therefore, the Tribunal had no occasion to consider this case.

So far as reliance on the letter dated 07.02.2001 is concerned, we had carefully perused the averments made in the OA and on perusal of the same, it goes to show that no such plea was taken in the OA and therefore, it cannot be said that any such plea was taken in the OA or was not considered by the Tribunal or there is any error apparent on the face of the record.

That being so, there is no merit in the application. The same is dismissed.

Pronounced in open Court on Nd 2 June, 2022.

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. BOBBY CHERIAN MATHEWS)
MEMBER (A)

nk/ap