

COURT No.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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OA 638/2019 with MA 1220/2019 , 4224/2022 & 855/2023

Ex Sgt Babu Lal Yadav Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr J P Sharma, proxy for Mr. Ajit
Kakkar, Advocate
For Respondents : Mr. K K Tyagi, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
05.04.2023

MA 855/2023

Vide this MA, the respondents seek waiver of cost of Rs.5,000/- imposed vide order dated 27.02.2020 for delay in filing the counter affidavit.

On a perusal of the order dated 02.01.2023, there appears to be a typographical mistake wherein it has been mentioned that costs imposed vide order dated 27.02.2020 are indicated to have been deposited by the respondents whereas the costs of Rs.5,000/- imposed upon the respondents vide order dated 27.02.2020 are not indicated to have been deposited by the respondents. The learned counsel for the respondents seeks the

waiver of costs as imposed vide order dated 27.02.2020 with submit to the effect that officials of the respondents had provided the parawise comments on 30.08.2019 for preparing of the counter affidavit and filing the same and in this regard, a letter dated 11.09.2019 was issued to the previous counsel and again a reminder dated 02.03.2020 and 10.03.2020 was given by the officials of the respondents to the previous counsel. Copies of the said reminders are annexed as annexure R-1, R-2, R-3 and R-4 indicated to have been received by the learned counsel for the respondents. The respondents have placed on record a copy of communication dated 11.09.2019 sent by the respondent to similar effect to contend that the receiving signatures of the counsel for the respondents is on record. Copies of the communication dated 02.03.2020 and 10.03.2020 of the respondents have been placed on record alongwith the supporting affidavit of the authorized representative of the respondents dated 23.02.2023. A perusal of these documents shows apparent lapse in submitting of the counter affidavit due to the factors mentioned in the application which are due to the counsel of the respondents. It is well settled that a litigant ought not to suffer due to the lapse of the counsel. In the interest of justice, thus the application MA 855/2023 is

allowed and the costs of Rs.5,000/-imposed vide order dated 27.02.2020 are waived.

MA 1220/2019

This is an application filed under section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 75 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of UoI & Ors Vs Tarsem Singh 2009(1)AISLJ 371 and in Ex Sep Chain Singh Vs Union of India & Ors (Civil Appeal No. 30073/2017 and the reasons mentioned, the MA 1220/2019 is allowed and the delay of 75 days in filing the OA 638/2019 is thus condoned. The MA is disposed of accordingly.

MA 4224/2022

This is an application filed on behalf of the respondents for condonation of delay of 1013 days in filing the counter affidavit. In view of the reasons explained and in the interest of justice, the delay in filing the counter affidavit is condoned. The MA is disposed of accordingly.

OA 638/2019

The counter affidavit filed by the respondents is taken on record. No rejoinder is sought to be filed by the applicant.

Re-list for final hearing on 11.05.2023.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)