COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

8.

OA 3123/2023 with MA 4303/2023

Ex Rect Bhuwaneshwar Sah ... Applicant
Versus
Union of India & Ors. ... Respondents

For Applicant : Mr. Raj Kumar, Advocate
For Respondents : Mr. Avdhesh Kumar Singh, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C. P. MOHANTY, MEMBER (A)

ORDER
16.10.2023

Heard on the question of admission and condonation of delay.

2. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act 2007 (the Act, in short), the applicant has filed this application and the prayers made in para 8 read as under:

> (a) Quash the impugned order/Letter No. 13681735/LN/C-Cell dated 26.09.2015;
>
> (b) Direct the respondents to grant invalid pension with effect from the date prior to institution of this O.A;
>
> (c) Direct the respondents to pay arrears of pension with @ 12% per annum; and
>
> (d) Grant any other relief which this Tribunal may deem fit and proper in the facts and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.

On the applicant's own showing there being a delay of only 2750 days because he has calculated the delay with effect from 26.09.2015 when the so-called impugned order was passed. However, prima facie, we are of the view that the cause of action in the matter arose on 26th August, 1983 when Annexure A-2 was issued by the Record Office and therefore the delay is about 40 years from that date. We will explain

this position later in this order. The said application is registered as MA No. 4303/2023.

3. The facts in brief indicate that the applicant was enrolled in the Indian Army on 10.01.1981 and after about eight months of service, on 21.09.1981, the applicant was invalidated out of service on the ground that he was in low medical category on account of fracture Femur (Lt) which he sustained. According to the applicant, the fracture in the Femur was sustained by him on account of reasons attributable to his service. It is said that he suffered the injury while in active service. His claim for disability pension as per applicant's own showing was rejected on 30.11.1981 by the Record Office which is said to have been conveyed to the applicant by the Record Office on 26.08.1983 (Annexure A2). The records indicate and it is the case of the applicant as detailed in Para 4 that after the Record Office issued the Annexure A2 order on 26.08.1983, the applicant sent a representation to the Record Office claiming disability pension vide representation dated 26.06.2015 i.e. after 32 years. The Record Office, vide their communication dated 04.07.2015 (Annexure A3) conveyed to the applicant that the entire records pertaining to the applicant had been destroyed on 17.03.2011 by a Board of Officers after the retaining period stipulated in Para 595 of the Regulations for the Army 1987 being a non-pensioner was over. In the communication made to the applicant vide Annexure A1 dated 26.09.2015 the applicant has been informed that his service records had been destroyed in March 2011, that he had filed the representation after a lapse of around 35 years and that the records are not available as the entire documents had been burnt. That apart, in the parawise

comments to his representation the respondents have only indicated that the records had been burnt and in his case, they are unable to process his case on account of non-availability of records. In Annexure A2 communicated to the applicant way back in 1983, the respondents have indicated that the applicant is not entitled to any benefit. The learned counsel for the applicant vehemently argued that the applicant has a good case for claiming disability element and disability pension, and as he was invalidated out from service on medical ground, he is entitled to invalid pension which is not time barred.

4. Having heard the learned counsel for the parties and on consideration of the facts and the arguments advanced, the moot questions that warrant consideration before us are:

(i) Whether at this stage after a period of about 35 years, does the cause of action survive?

(ii) Whether the O.A is liable to be dismissed on the ground of delay and laches?

(iii) Whether the impugned order based on which the applicant claims limitation is sustainable in law for claiming invalid pension?

We find that Section 22 of the Act lays down the following statutory provisions for limitation:

22 Limitation:-- (1) The Tribunal shall not admit an application—

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 21 has been made unless the application is made within six months from the date on which such final order has been made;

(b) in a case where a petition or a representation such as is mentioned in clause (b) of sub-section (2) of section 21 has been made and the period of six months has expired thereafter without such final order having been made;

(c) in a case where the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which jurisdiction, powers and authority of the Tribunal became exercisable under this Act, in respect of the matter to which such order relates and no proceedings for the redressal of such grievance had been commenced before the said date before the High Court.

(2) Notwithstanding anything contained in sub-section (1), the Tribunal may admit an application after the period of six months referred to in clause (a) or clause (b) of sub-section (1), as the case may be, or prior to the period of three years specified in clause (c), if the Tribunal is satisfied that the applicant had sufficient cause for not making the application within such period.

We will examine the case in hand in the backdrop of the aforesaid statutory provision. Section 22 contemplates that the Tribunal shall not admit an application in case where a final order such as is mentioned in Clause (a) of sub-section (2) of Section 21 has been made unless the application is made within six months from the date on which the final order has been made. Thereafter, sub-section (b) contemplates that in case a representation has been made and the representation has not been decided for six months then the application can be filed as contemplated in Clause (c). However, sub-section (2) of Section 22 gives power to the Tribunal for condonation of delay which is akin to Section 5 of the Limitation Act inasmuch as the Tribunal can condone the delay in case sufficient cause for the delay in making the application is established. Admittedly, in this case, as the applicant was invalided out from service on 21.09.1981, his claim for disability pension was rejected by the Record Office on 30.11.1981 and according to applicant's own showing, vide Annexure A2 passed on 26.08.1983 the Record Office communicated these decisions to the applicant. That

being so, the cause of action for grievance of the applicant arose on 26.08.1983 if not on 30.11.1981 when the Record Office rejected his claim. The applicant right from 26.08.1983 kept quiet and there is no mention anywhere in the pleadings as to what steps the applicant took after the order was passed on 26.09.2015 to ventilate his grievance. After having narrated all these facts in Para 4.1 and 4.2 the applicant in Para 4.3, applicant points out that he submitted a representation on 26.06.2015 for grant of disability pension and on 04.07.2015 by the Annexure A3 order, the applicant was informed that his case cannot be processed as the records had been destroyed on 17.03.2011 as per Para 595 of the Regulations for the Army 1987. That being so, even for the sake of argument if it is assumed that the cause of action arose on 26.09.2015, then even after 26.09.2015 a period of more than eight years are over, and there is nothing on record to indicate as to why the applicant kept quiet for eight years.

5. The inaction and the deep slumber of the applicant for about 35 years has resulted in the entire records pertaining to his accident, medical assessment and everything having been destroyed and on account of delay and laches on the part of the applicant, the respondents are unable to cause any inquiry into the matter or even place material before this Tribunal to cause an inquiry and decide the issue.

6. As indicated herein above, sub-section (2) of Section 22 of the Act does give power to this Tribunal to condone the delay in initiating the proceedings and in the application filed by the applicant for

condonation of delay (MA No. 4303/2023) under Section 22 of the Act, the applicant casually relied on various judgments of the Hon'ble Supreme Court and this Tribunal to say that this Tribunal has been liberal enough in condoning the delay in case of disability and this being a case of invalidation of the applicant on medical ground, the delay should be condoned. We are unable to accept the aforesaid proposition of the applicant. A court of law is required to help an individual who is vigilant in raising his claim and contesting an action and the law does not support a person who sleeps over his right and wakes up after a long slumber of around 32/35 years. That apart, sub section (2) of Section 22 of the Act is *pari materia* with Section 5 of the Limitation Act pertaining to condonation of delay and generally the Courts adopt a liberal view for condonation of delay if sufficient grounds are made out and a liberal approach is adopted which is justice oriented to do substantial justice. However, in this case the applicant has miserably failed in showing any substantial cause which resulted in such an inordinate delay in approaching this Tribunal. Even after the communication was made to the applicant in 2015 regarding destruction of the records, he slept over the matter for more than eight years.

7. Meaning and expression of the term "sufficient cause" as used in Section 5 of the Limitation Act has been subject matter of consideration by the Hon'ble Supreme Court in various cases and it would be appropriate to take note of the principles laid down by the Hon'ble Supreme Court in this regard in various judgments. In the case of ***Maniben Devraj Shah Vs Municipal Corporation Of Brihan Mumbai***

(2012) 5 SSC 157 in Para 14, the Hon'ble Supreme Court held as under:-

> *The law of limitation is founded on public policy. The Limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the court for vindication of their rights without unreasonable delay. The idea underlying the concept of limitation is that every remedy should remain alive only till the expiry of the period fixed by the legislature. At the same time, the courts are empowered to condone the delay provided that sufficient cause is shown by the applicant for not availing the remedy within the prescribed period of limitation.*

Even though the Hon'ble Supreme Court goes on to say that the Court should adopt a liberal approach to do substantive justice to the parties but if the other side has acquired certain right on account of delay of the petitioner, it should not be taken away and it is incumbent upon the Court to draw a distinction where the delay is inordinate where the delay is of a few days only. In a case of inordinate delay, consideration of prejudice to the other side becomes a relevant factor in the matter of condonation of delay.

8. Again in the case of ***B, Madhuri Goud Vs. B. Damodar Reddy*** (2012) 12 SSC 693, it has been held by the Hon'ble Supreme Court that the purpose of Limitation Act is not to destroy the rights of the parties but to ensure that they approach the Court for vindication of their right without unreasonable delay. The expression "Sufficient Cause" used in Section 5 of the Limitation Act has been held to be elastic but it has to be given effect to in a manner that it does not encroach into the rights and causes prejudice to the opposite party.

9. Finally, we may take note of the law laid down by the Hon'ble Supreme Court in the case of ***Esha Bhattacharjee Vs. Managing***

Committee of Raghunathpur Nafar Academy and others (2013) 12 SCC 649, wherein after taking note of various aspects with regard to condonation of delay and meaning of the expression "sufficient cause" 17 principles have been curled out by the Hon'ble Supreme Court. Principle (i), (ii), (iv), (viii), (ix), (x), (xiv) and (xvii) reads as under:-

> *"(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*
>
> *(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.*
>
> *(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*
>
> *(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*
>
> *(ix) The conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*
>
> *(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*
>
> *(xiv) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*
>
> *(xvii) The increasing tendency to perceive delay as non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.*

The complete reading of all these principles indicates that even though liberalize pragmatic justice oriented approach has to be applied in

dealing with an application for condonation of delay, the term "sufficient cause" has to be understood in its proper spirit, philosophy and deliberate causation of delay and gross negligence on the part of the litigant has to be taken note of while considering the prayer for condonation of delay. The conduct and in action or negligence on the part of the party are relevant factors to be taken note. The court is required to weigh and balance the scale of justice for both the parties and on the ground of liberalized approach, the principle cannot be given go by. It has been observed by the Hon'ble Supreme Court that after the extension offered or the grounds served in an application for condonation are fanciful, the court should be vigilant and should not expose the opposite party to unnecessarily facing litigation after inordinate period of time. The Hon'ble Supreme Court has also deprecated the increasing tendency to perceive delay in a non serious matter in the garb of liberal approach.

10. If we analyze the facts of the present case and the attitude and approach of the applicant, we are of the considered view that sufficient cause is not made out for condonation of delay. Merely because the applicant is claiming invalid pension, we cannot condone the delay mechanically when in our considered view, the sufficient cause for the delay is not reasonably explained.

11. Apart from the fact that sufficient cause for the delay is not explained by the applicant, the delay and laches on the part of the applicant has resulted in prejudice being caused to the respondents in defending themselves in the matter inasmuch as in accordance with the

statutory regulation as contemplated in the Regulation for the Army 1987 the records pertaining to the applicant being a non-pensioner has been destroyed by burning on 17.03.2011 much before the applicant even approached the respondents with his representation on 26.06.2015. This is a case where the applicant after his invalidment on 30.11.1981 kept quiet over the matter for 32 years, woke up on 26.06.2015, represented to the respondents and the respondents informed the applicant that they cannot take any action as his records had been destroyed. Thereafter again the applicant slept over for five years and has now approached this Tribunal claiming disability pension. In our considered view, on account of the inordinate unexplained delay and laches on the part of the applicant and since the applicant has not shown any sufficient cause for the delay in the peculiar facts and circumstances of this case we are not inclined to interfere with the matter.

12. Resultantly, the M.A and the O.A stand dismissed.

[RAJENDRA MENON]
CHAIRPERSON

[C. P. MOHANTY]
MEMBER (A)

/Jyoti/