

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

6.

OA 1469/2024 with MA 1835/2024

Commander George P. Chalakkal (Retd)	.....	Applicant
Versus		
Union of India & Ors.	.....	Respondents
For Applicant	:	Ms. Megha Agarwal, Advocate
For Respondents	:	Gp Capt Karan Singh Bhati, Sr. CGSC

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

ORDER  
07.05.2024

OA 1469/2024 with MA 1835/2024

Heard on the question of admission.

2. Invoking the jurisdiction of this Tribunal under Section 14 has filed this application and the reliefs claimed vide Para 8 read as under:

- "a) To declare the action of the Respondents as unjust, arbitrary and illegal; and
- b) To quash and set aside the review/markings made by Vice Admiral GM Hiranandani in the impugned ACR covering period April-June 1985, ; and
- c) To quash and set aside rejection of promotion of the Applicant to the rank of Captain; and
- d) To direct the Respondents to grant, to the Applicant, all consequent notional promotions along with all service and post retirement benefits/perks; and
- e) To pass such further order or orders, direction/directions as this Hon'ble Tribunal may deem fit and proper in accordance with law."

3. The applicant is challenging his ACR for the period April 1985 to June 1985 and there being an inordinate delay of more than 38 years, the applicant has filed an application under Section 22(2) of the Armed Forces Tribunal Act, 2007 being MA 1835/2024 seeking condonation of delay and in Para 3, 4, 5 and 6 of the application for condonation of delay, delay is sought to be condoned on the following grounds:-

“3. Applicant submits that Applicant was released from service on 03.01.2000 after 4 years of re-employment i.e. from 31.01.1996 till 03.01.2000 and had accepted his fate, until recently i.e. February 2024 when Applicant learnt of the prejudice and bias that Vice Admiral GM Hiranandani held against the Applicant and had potentially given him unfavorable and unlawful reviews towards the ACR of the Applicant for the period April-June 1985.

4. That Applicant being above 80 years of age and is nearing the end of his life and seeks indulgence of this Hon'ble Tribunal.

5. That the law well settled by the Hon'ble Supreme Court w.r.t pension is that arrears of pension cannot be denied on the ground of delay in approaching the Court as pension is a continuous cause of action.

6. That the resultant delay in approaching this Hon'ble Tribunal is neither intentional nor deliberate, but has been for reasons as stated here in above. It is respectfully submitted that the delay of 38 years and 3.5 months approximating 13,980 days in approaching this Hon'ble Tribunal be condoned, and the accompanying OA seeking inter-alia, setting aside denial of promotion to the rank of Captain and grant of all consequent notional promotions along with all service and retirement benefits/perks be allowed.”

4. Mr. Karan Singh Bhati, learned Sr. counsel for the respondents raised a preliminary objection and submits that

such an inordinate delay cannot be condoned now that also after the applicant has retired and even after completing 4 years of re-employment when his service came to an end on 03.01.2000. Apart from the fact that there is no explanation for the inordinate delay of more than 38 years, learned counsel for the respondents submits that filing of this application after 24 years of his retirement, particularly, seeking for expunction of an ACR is hopelessly barred by the principles of delay and laches and on this ground alone this application is liable to be dismissed.

5. Facts in brief indicate that the applicant was commissioned as an Engineer Officer in the Indian Navy on 18<sup>th</sup> October, 1965 and was posted at INS Venduruthy. The applicant served the Indian Navy for 20 years from October 1965 up to April 1985. According to the applicant, he has received Gallantary Award, i.e., Nao Sena Medal on 26<sup>th</sup> January, 1985. In April 1985 to June 1985, the applicant was due for promotion to the rank of Captain, however, even though the applicant was confident that based on the ACR criteria granted to him he would be granted promotion, he was not granted promotion at that point of time in the year 1985 on account of ACRs in question.

Thereafter the applicant continued to serve in the Indian Navy and ultimately retired from the service on the post of Commander on 03.01.2000 after working on re-employment for an additional period of 4 years.

6. It is the case of the applicant that one Vice Admiral G. M. Hiranandani was biased and prejudiced against the applicant and most likely gave him unfavorable ACR for the period of April-June 1985 and therefore as this fact came to the notice of the applicant in August 2023, i.e., 23 years after his retirement from re-employment, he has now challenged the ACR.

7. In our considered view, the applicant has slept over the matter for an inordinate long period of time. Under the provision of Section 22 of the Armed Forces Tribunal Act, 2007 period of limitation is fixed in the following manner:-

**“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.”

8. In this case, the cause of action according to the applicant's own showing accrued to him in June 1985 when he was superseded for the post of Captain. The applicant for the first time woke up in August 2023, i.e., after 37 years. The application for seeking condonation has to satisfy this Tribunal that he has sufficient cause for not making the application within the period of limitation. No such cause has been accorded or explained in the application for the condonation of delay and laches in invoking the jurisdiction of this Tribunal.

9. Taking note of the reasons indicated in the application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007, we find that the delay of approximately 38 years

and 3.5 months, i.e., 13,980 days has not been satisfactorily explained by the applicant and now 23 years after retirement of the applicant no useful purpose would be served by investigating into the matter at the instance of the applicant. Accordingly, finding the claim of the applicant hopelessly barred by delay and laches, we dismiss the OA at this stage itself.

10. Accordingly, OA stands dismissed both on the ground of delay and merit.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[LT GEN C. P. MOHANTY]  
MEMBER (A)

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