

**ARMED FORCES TRIBUNAL, CHANDIGARH
REGIONAL BENCH AT CHANDIMANDIR**

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OA 08 of 2014

Major (Retd) Bachan Singh **Petitioner(s)**
Bhatia

Vs

Union of India and others **Respondent(s)**

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For the Petitioner (s) : Lt Col(Retd)SN Sharma, Advocate.

For the Respondent(s) :

Coram: Justice Vinod Kumar Ahuja, Judicial Member.
Air Marshal (Retd) SC Mukul, Administrative Member.

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ORDER
23.01.2014

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1. This is an application filed by the petitioner under Section 14 of the Armed Forces Tribunal Act, 2007.

2. Briefly stated the facts of the case are that the petitioner was enrolled in the Army on 24.01.1970 as a Sepoy in Army Medical Corps and later got commission on 05.07.1985 as a Short Service Commissioned Officer. He was superannuated in the rank of Major with effect from 31.05.2007. He was promoted to the rank of Major in 1998 but was not promoted to the rank of Lieutenant Colonel for which he was entitled. He prayer that he was entitled for promotion to the rank of Lieutenant Colonel and his statutory complaint was not decided and he issued a legal notice and thereafter filed the present application praying that the order Annexure A-14 denying him promotion to the rank of Lieutenant Colonel be quashed and the respondents be promoted to give promotion to him.

3. Before issuing notice to the respondents we had considered the question of limitation as to whether the present petition was within time.

4. We have heard the learned counsel for the petitioner.

5. The submissions made by learned counsel for the petitioner were that the petitioner filed the statutory complaint on 28.02.2006, which was not decided. Thereafter he issued a legal notice dated 04.04.2012 which was replied vide letter dated

23.05.2012 that his case was without any merit and the same has been rejected.

6. It is clear from above discussion that the petitioner filed a statutory complaint dated 28.02.2006 and the same as alleged by him was not decided by the respondents.

7. Sections 21 and 22 of the AFT Act define the conditions under which an application can be admitted for consideration at AFT. These read as under:-

“21. Application not to be admitted unless other remedies exhausted :

(1) The Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of the remedies available to him under the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950) as the case may be, and respective rules and regulations made thereunder.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950, (45 of 1950) and respective rules and regulations—

(a) if a final order has been made by the Central Government or other authority or officer or other person competent to pass such order under the said Acts, rules and regulations, rejecting any petition preferred or representation made by such person;

(b) where no final order has been made by the Central Government or other authority or officer or other person competent to pass such order with regard to the petition preferred or representation made by such person, if a period of six months from the date on which such petition was preferred or representation was made has expired.

22. Limitation : 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. It is clear from above discussion that in case the statutory complaint is not decided by the authorities, the petitioner is required to wait for six months and in case the petition is not decided within a period of six months from the date of filing, he gets another six months to approach this Tribunal for redressal of his grievances. Thus, the petition has to be filed within a period of one year from the date of filing of statutory complaint.

9. The submissions made by learned counsel for the petitioner, on the other hand, were that in case his petition is not decided within a period of six months he gets another three years to file the present petition. To substantiate his submissions he relied upon the judgment of Hon'ble Apex Court in the case of **S.S.Rathore Vs. State of Madhya Pradesh, 1989 SCR Supl.(1) 43 = 1989 SCC(4) 582, jt 1989(3) 530 & 1989 scale (2) 510**, decided on 06.09.1989. a perusal of this judgment shows that the Hon'ble Supreme Court had observed that the statutory appeals are required to be disposed of expeditiously. Ordinarily a period of 3 to 6 months can be said to be the outer limit. A perusal of the judgment shows that their Lordships had observed as under:-

“ We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen.”

10. It is, therefore, clear that in case the statutory complaint is not decided within a period of six months, the petitioner gets another six months for filing an appeal which shall be considered as the date when the cause of action had accrued to him. The law of limitation does not apply to the present petition when a specific provision has been made in the Act and limitation has been specifically provided

therein. Thus, the petitioner had to wait for six months from the date of filing of the statutory complaint which is dated 28.02.2006 and after waiting for six months, he was required to file the petition by 28.08.2006. However, the present petition having been filed on 06.01.2014 cannot be said to be within time and as such the present petition is liable to be dismissed on the ground of limitation and the same is hereby dismissed.

(Justice Vinod Kumar Ahuja)

(Air Marshal (Retd) SC Mukul)

23.01.2014

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Whether the judgment for reference is to be put on Internet? Yes/ No