

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

M.A.No.11 of 2013
in
O.A.No.16 of 2013
&
O.A.No.16 of 2013

Friday, the 12th day of July, 2013

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER-JUDICIAL)
AND
THE HONOURABLE LT GEN (RETD) ANAND MOHAN VERMA
(MEMBER – ADMINISTRATIVE)

M.A.No.11 of 2013 &
O.A.No.16 of 2013

Singuru Srinivasa Rao, S/o. Venkata Rao,
Aged 36 years, Occ: Ex.Service No.14816104,
R/o. Tellavanipeta Village, Priya Agraharam Post,
Polaka Mandal, Srikakulam District,
Andhra Pradesh.

... Petitioner/Applicant

By Legal Practitioner:
M/s. K. Ramakoteswara Rao,
B. Naganjaneyulu

Vs.

1. The Union of India,
Rep. by its Secretary,
Ministry of Defence, New Delhi.
2. The Chief of Army,
Government of India, New Delhi.
3. The Record Officer,
Senaseva Corps, Abhilekh (Dakshin),
ASC Record (South),
Bengaluru - 560 007, Karnataka.

... Respondents

By Mr. B. Shanthakumar, SPC

ORDER

(Order of the Tribunal made by
Hon'ble Justice V.PeriyaKarupiah, Member-Judicial)

M.A. No.11 of 2013

1. This application has been filed by the petitioner/applicant seeking for the condonation of delay of 2871 days in filing the present O.A.No.16 of 2013.

2. The case of the petitioner in this Miscellaneous Application would be as follows :-

The petitioner is the applicant in the main Original Application. He has filed the O.A. to set aside the impugned Order No.14816104/NER/DES/AGI/AFPP dated 23.11.2004, passed by the 3rd respondent and consequently to direct the respondents reinstate the applicant into service with all consequential benefits from the date of alleged desertion on 12.4.2001. While the applicant was serving the Army as a Driver enrolled on 24.4.1996, he had rendered three years of service in the State of Jammu and Kashmir and was subsequently posted to ASC 504 Battalion at Allahabad, Uttar Pradesh, and worked there for two years till 2001. The marriage of the petitioner was fixed in the year 2001 and he got

20 days of leave from the Commandant. During the said period, he was affected by viral fever and, therefore, he got 08 days excess leave over the 20 days leave granted to him. When he reported back before the Commandant at Allahabad for joining the duties, he was directed by the Commandant to go for private employment. The Commandant did not permit the applicant to resume duties despite he produced a Medical Certificate dated 6.1.2001. But action was taken against the applicant and an impugned Order was passed by the 3rd respondent on 23.1.2004 dismissing the applicant from service being a deserter with effect from 12.4.2004 under Section-20(3) of the Army Act, 1950. Challenging the said dismissal order, the applicant had sent requisition for reinstatement on 3.11.2005, but it was rejected by the respondents on 21.11.2005. Subsequently, the applicant had also represented for reinstatement, but it was of no avail. Finally, he sent a representation on 5.1.2012 and it was received by the respondents and no relief was granted. Therefore, the present O.A. has been filed challenging the impugned order dated 23.11.2004. The applicant hailed from a remote village in Srikakulam District, which is a very backward District in the State of Andhra Pradesh and he was also a poor person. The applicant has been facing poverty since 2001 onwards. Hoping that the applicant would be reinstated by the respondents, he kept quiet since the date of the impugned order. Therefore, the applicant could not approach this Tribunal for taking necessary action to reinstate him

in service. Since the applicant is fighting continuously for his genuine cause against the 3rd respondent, he was not able to approach in time and, therefore, the delay of 2871 days have been caused in presenting the O.A. before this Tribunal. The delay is neither wilful nor wanton on the part of the applicant except for the aforesaid reasons. In the event of not condoning the delay, the applicant's case would be closed prematurely without going into the merits. Therefore, the applicant requests for condonation of delay of 2871 days in filing the O.A. and thus the application may be allowed.

3. The objections raised by the respondents in their Counter Affidavit would be as follows :-

The claim of the applicant in the main O.A. is barred by law of limitation as the application has admittedly been filed after a lapse of 2871 days. The applicant was guilty of laches on his part in not filing the case either before the High Court Judicature of Andhra Pradesh or before this Tribunal after its formation and, therefore, the application to condone the delay is liable to be dismissed summarily. The reasons put forth by the applicant are not sufficient to condone the delay and there was no explanation for the long delay of eight years in filing the Original Application. The applicant was declared as a 'deserter' since he was absent for a period of three years in the peace area. The procedures for declaring the applicant

as a deserter and the dismissal order passed under Section-23 of Army Act, 1950, with effect from 12.4.2004, are in pursuance of the policy contained in Army Order 43/2001/DV coupled with the letter No.14816104/NER/DES/AGI/AFPP dated 23.11.2004. A dismissed deserter cannot be rejoined in the unit as per para 10 (b) of Army Order 43/2001/DV. The reasons submitted by the applicant that he was a poor man and was not able to approach this Tribunal for challenging the impugned order cannot be sustained since the applicant was intimated about the rejection of his petition dated 3.11.2005 for rejoining the army vide letter No.14816194/NER/DES/AGU dated 21.11.2005. Therefore, the applicant cannot plead further representation, as a cause for the condonation of delay. The applicant did not explain the delay for a lengthy period of eight years. In a similar case, the Armed Forces Tribunal, Regional Bench, Lucknow, passed an Order in O.A.No. Nil (1)/2011 dated 8.8.2012, dismissing the application for condonation of delay on the ground of delay and laches. In another case in O.A.No.55 of 2012 with M.A.No.78 of 2012, the same Bench dismissed the delay condonation application on 17.2.2012 for the same reasons. The Hon'ble Principal Bench, Armed Forces Tribunal, New Delhi, had circulated the aforesaid Judgement for future guidance of all other AFT Regional Benches. Therefore, the application seeking for condonation of delay has to be dismissed.

O.A.No.16 of 2013

4. This application is filed by the applicant to set aside the impugned Order No.14816104/NER/DES/AGI/AFPP dated 23.11.2004, passed by the 3rd respondent and consequently to direct the respondents to reinstate the applicant into service with all consequential benefits from the date of the alleged desertion and for other reliefs.

5. Heard Mr. K. Ramakoteswara Rao, Learned Counsel for the applicant and Mr. B. Shanthakumar, Learned Senior Panel Counsel assisted by Captain Vaibhav Kumar, Learned JAG Officer, appearing for the respondents.

6. The Learned Counsel for the applicant Mr. Ramakoteswara Rao, would insist in his argument that the impugned order was passed by the 3rd respondent on 23.11.2004 against which the applicant had made a representation on 3.11.2005 for the reinstatement of the applicant and the same was not considered. He would further submit that the applicant was continuously representing both orally and in writing for his reinstatement with the respondents throughout till he filed another representation dated 5.1.2012 through Registered Post. He would further submit that the applicant was therefore keeping quiet without challenging the Order passed against him on 23.11.2004, on the fond hope that his claim would be

considered by the respondents. He would also submit that the applicant hailed from a remote village in Srikakulam District of Andhra Pradesh State and was not having any income to file a litigation, which also caused the delay. Further, the applicant has got merit in the Original Application since his attempt to rejoin with the Medical Certificate on 6.1.2001 was not accepted by the Commandant and, therefore, the original Order of dismissal by declaring the applicant as deserter would not sustain. In the interest of justice, the applicant may be given an opportunity to challenge such an illegal Order and, therefore, the delay of 2871 days may be condoned and the application filed in O.A.No.16 of 2013 may be posted for admission.

7. The Learned Senior Panel Counsel would submit in his argument that the applicant has not explained the delay to the satisfaction of the Tribunal for condoning the long delay of 2871 days in filing the main Original Application. He would further submit that the applicant is at the legal obligation to explain every day's delay, but the applicant did not explain the same. The reasons put forth by the applicant are not adequate to condone the delay of long eight years. The applicant was well aware of the rejection of his plea even in the year 2005 and no documents were produced to show that he was making continuous representations to the respondents for reinstatement. He would also submit that a Discharge Certificate was issued to the applicant already and it would show that the applicant was dismissed

from service on and from 23.11.2004 and, therefore, he could not plead ignorance of the dismissal order. He would further submit that the reasons attributed for such a long delay cannot be condoned in view of the Judgements of AFT, Regional Bench, Lucknow, made in O.A.No. Nil (1)/2011 dated 8.8.2012, and O.A.No.55 of 2012 with M.A.No.78 of 2012 dated 17.2.2012. Therefore, he would request us to dismiss the application and consequently to dismiss the main O.A.

8. We have given anxious thoughts to the arguments advanced on either side.

9. The points arose on the aforesaid pleadings and arguments would be as follows :-

- 1) Whether the delay of 2871 days was explained by the applicant so as to permit him to file the Original Application in O.A.No.16 of 2013 ?
- 2) Whether the application filed in M.A.No.11 of 2013 to condone the delay of 2871 days in filing the O.A.No.16 of 2013 be allowed ?
- 3) To what relief the petitioner/applicant is entitled ?

10. **Points No.1 & 2:** The applicant of the Original Application, has filed the present application in M.A.No.11 of 2013 seeking for condonation of delay of 2871 days in filing the main O.A.No.16 of 2013. The reasons attributed by the applicant for such a huge delay is that the applicant was continuously making representations to the respondents for his reinstatement from the date of his dismissal till the date of filing of this O.A.No.16 of 2013. The date of dismissal of the applicant was admittedly on 23.11.2004. The applicant himself has produced an impugned Order dated 21.11.2005 in his typeset Part-II as Ex.A2. In the said letter, we can see that he has preferred a petition on 3.11.2005 for reinstatement in service. It was stated in the said letter that the claim for reinstatement by the applicant made in his petition dated 3.11.2005 was rejected since the rules did not permit a dismissed deserter, be reinstated into service. Therefore, we could understand that the applicant had made representation for reinstatement into service even as on 3.11.2005. When it was admitted that he had submitted a petition on 3.11.2005, the argument advanced on the side of the applicant that the applicant was not aware of his dismissal order till such a date and, therefore, the delay has been caused, cannot be accepted. Another argument advanced on the side of the applicant was that the applicant was keeping on representing before the respondents for reinstatement verbally and in writing even after the rejection of his claim for reinstatement by the respondents through their letter dated 2.11.2005. For

that, no document was produced by the applicant to substantiate the said claim. Even in the Original Application, the verbal requests said to have been made referred are not as causes of action. At last, the applicant had sent a requisition through post on 5.1.2012, and there was no evidence produced for the receipt of those letters by the respondents since the Acknowledgement Card produced does not contain the recipient's signature.

11. The reasons stated by the applicant that he hailed from a remote village at Srikakulam District of Andhra Pradesh State could not be a ground for condoning the delay since the applicant himself had approached the respondents during 2005 i.e. 3.11.2005 by filing a petition before the respondents. The poverty as pleaded by the applicant cannot also be considered since he had come forward even at this stage to challenge the Order passed in the year 2004. Further more, the reference as to a Medical Certificate dated 6.1.2001 stated to have been submitted before the Commandant of his unit has not been substantiated by any other material documents by producing the letter dated 3.11.2005. If really the applicant opted to join service on 6.1.2001, it would have been referred in the said letter. The absence on the part of the applicant, for being declared as a deserter, was three years. When the applicant could not show any reason for not approaching any one of the units of the army for joining the army during the time of his over stayal of his leave, how he would serve in the

army even if reinstatement is ordered in his favour is a pertinent question. Therefore, the merits of the case as argued by the Learned Counsel for the applicant has no legs to stand.

12. In view of the discussion held above, we are of the considered view that the applicant has not explained the long delay of 2871 days to our satisfaction. The Judgements as rendered by the AFT, Regional Bench of Lucknow, in O.A.No. Nil (1)/2011 dated 8.8.2012, and O.A.No.55 of 2012 with M.A.No.78 of 2012 dated 17.2.2012, are squarely applicable to the facts and circumstances of the present case. Therefore, we cannot exercise our discretion in favour of the applicant to condone the delay of 2871 days in filing the Original Application and, therefore, both the points are decided against the applicant accordingly.

13. **Point No.3:** In view of our findings reached in Points No.1 & 2, we are of the considered opinion that the condonation of delay of 2871 days has not been properly explained and the claim of the applicant is also affected by delay and laches. Therefore, the application filed by the applicant seeking for the condonation of delay of 2871 days is liable to be dismissed. Consequently, the application in O.A.No.16 of 2013 is also liable to be dismissed.

14. In view of the dismissal of the application for condonation of delay of 2871 days in M.A.No.11 of 2013, the Original Application filed by the applicant seeking for reinstatement into service, even though it is numbered as O.A.No.16 of 2013, is accordingly dismissed.

15. In fine, the application in M.A.No.11 of 2013 is dismissed. Consequently, the application in O.A.No.16 of 2013 is also dismissed. No order as to costs in both the applications.

Sd/-
LT GEN (Retd) ANAND MOHAN VERMA
MEMBER (A)

Sd/-
JUSTICE V.PERIYA KARUPPIAH
MEMBER (J)

12.7.2013
(True Copy)

Member (J) - Index : Yes / No
Member (A) - Index : Yes / No

Internet : Yes / No
Internet : Yes / No

To,

1. The Secretary to Government,
Union of India,
Ministry of Defence,
New Delhi.
2. The Chief of Army,
Government of India,
New Delhi.
3. The Record Officer,
Senaseva Corps, Abhilekh (Dakshin),
ASC Record (South),
Bengaluru-560 007, Karnataka.
4. M/s. K. Ramakoteswara Rao,
B. Naganjaneyulu,
Counsel for petitioner/applicant.
5. Mr. B. Shanthakumar, SPC,
Counsel for respondents.
6. OIC, Legal Cell (Army),
ATNK & K Area,
Chennai-9.
7. Library, AFT, Chennai.

**HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN (RETD) ANAND MOHAN VERMA
MEMBER (ADMINISTRATIVE)**

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