

(SEE RULE 102 (1))
ARMED FORCES TRIBUNAL, KOLKATA BENCH
M.A NO. 54/2015

With O.A. No. 40/2015

THIS 24TH DAY OF JULY, 2015

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HON'BLE JUSTICE DEVI PRASAD SINGH, MEMBER (JUDICIAL)

HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

APPLICANT(S) Ex-No. 9640556-B Aircraft Man (U/T) MT Driver Santosh Kumar
S/o Sri Harendra Prasad Singh
Village - Dadanpur
P.O. & P.S. - Maker
Dist. – Saran
Bihar - 841215

-versus-

RESPONDENT(S)

1. The Union of India through the Secretary
Min of Defence, Government of India,
Ministry of Defence, South Block,
New Delhi
2. The Chief of Air Staff
AIR HQ, Vayu Bhawan,
Rafi Marg
New Delhi - 110011.
3. Adjutant General Air Force,
Military Training, Air Force
New Delhi – 110 011.
4. Additional Director General
(Discipline & Vigilance)
Air Force
New Delhi – 110 011.
5. The Secretary, Officer-in-Charge,
Record Officer
Adjutant General's Office
Air Force, New Delhi – 110 011.
6. Group Captain, Commanding Officer
Indian Air Force
MTTE AIR FORCE, Avadi
Madras, Tamilnadu – 600 055.

For the petitioner (s) **Md. Amzad Hussain, Advocate**

For the respondents **Mr. Anup Kumar Biswas, Advocate**

1. This is an application for condonation of delay in preferring the OA No. 40 of 2015. The applicant was recruited in the Air Force and joined on 16.12.1996. While undergoing training his performance was not found to be satisfactory rather very bad. Hence he was discharged on 13.06.1997 with a comment "unlikely to make efficient Airman". After discharge from Air Force without completing his training he kept silent for about 17 years. In 2015 he preferred a Writ Petition No. 4349 of 2015 in the High Court of Patna which was dismissed and withdrawn on 23.03.2015 to approach the Tribunal. It has been stated that in 1997 he engaged Mr. S.K. Mukherjee, Advocate who served a legal notice to the respondents on 20.11.1997. Till date the respondents have not taken any step or send any reply to the petitioner's advocate or to the petitioner. Though the applicant pleaded that because of ignorance of law he has not preferred a petition but at least some material fact should have been brought on record which could have created a ground for condonation of delay.

2. Moreover, once the applicant had not successfully completed the training and discharged without completing the training with a comment "he is not qualified and fit enough to make an efficient Airman", then there appears no reason to entertain the petition on merit after lapse of 17 years. The question of fact on record with regard to applicant's competency assessed by the Air Force may not seem to be looked into after lapse of 17 years, even if the delay is condoned. The relief claimed by the applicant for restoration in service and set aside discharge order dated 13.06.1997 after lapse of 17 years does not seem to make out a case for consideration on merit. There appears to be no good ground and sufficient cause to condone the delay or admit the petition to be heard on merit. While parting with the order, we may not restrain ourselves to express our views that the applicant has been ill advised by his counsels to prefer a Writ Petition in Calcutta High Court after 17 years and then approached the Tribunal. The applicant's case seems has been not studied properly by his counsel for the purpose of judicial view.

3. The Hon'ble Supreme Court in a case reported in **AIR in 1960 SC 260 – Sitaram Ramcharan and others Vs. M.N. Nagrashana Authority** held that "sufficient cause must cover the whole period of delay".

4. **In 1994 (Supp.) 2 SCC 195 – Ex. Capt. Harsh Uppal Vs. Union of India and others** where Hon'ble Supreme Court held that parties should pursue right promptly and not sit over their rights. The party could not be permitted to sleep over their rights and choose to avail the remedy after inordinate delay.

5. **In 1997 (&) SCC 556 – P.K. Ramchandran Vs. State of Kerala and another** Hon'ble Supreme Court cautioned the High Court not to condone the delay in a mechanical manner while deciding the application under Section 5 of the Limitaion Act recording its satisfaction for condonation of delay.

6. **In 2005 (8) SSC 709 – State of Karnataka Vs. Lamuman** the Hon'ble Supreme had declined to condone the delay where rights of the party have been extinguished by a fiction of law.

7. In view of the above, we reject the MA for condonation of delay and in consequence thereof the OA is also dismissed. No order as to cost.

(LT GEN GAUTAM MOORTHY)
Member (Administrative)

(JUSTICE DEVI PRASAD SINGH)
Member (Judicial)

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