A.F.R.

SEE RULE 102 (1)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

APPLICATION : O.A. (APPEAL) NO. 03/2016
ALONG WITH M.A. NO. : 186/2016

DATED : THE Twenty Eighth DAY OF AUGUST, 2018

CORAM

HON'BLE DR. (MRS.) JUSTICE INDIRA SHAH, MEMBER (JUDICIAL)
HON'BLE LT GEN GAUTAM MOORTHY, PVSM, AVSM, VSM, ADC, MEMBER (ADMINISTRATIVE)

APPLICANT (S) : No. 14564353A Ex Cfn (MV) Rajan Kumar Patra
S/o Shri Dhanurdhar Patra
R/O Vill. - Bharagol, PO – Nayahat
Dist – Puri, State -Orissa (Pin – 752107)
(Presently at Chamber – C-3/11, Bhaskar Roy Enclave, Kolkata – 700 052)

Versus

RESPONDENT (S) :

(1) The Union of India, service through
The Defence Secretary,
Ministry of Defence, South Block,
DHQ, PO, New Delhi – 110 011

(2) The Chief of the Army Staff
Through Adjutant General Branch
Integrated HQ of MoD (Army)
South Block, DHQ PO,
New Dellhi - 110011

(3) The Secretary,
Department of Ex-Servicemen
Welfare & Pension
Ministry of Defence, South Block,
New Delhi – 110011

(4) The Officer-in-Charge
EME Records,
PIN – 900 453, c/o 56 APO

(5) The Commanding Officer
616 EME Bn,
PIN – 906 616, c/o 56 APO

(6) The Principal Controller of Defence
Accounts (Pensions), Drapaudi Ghat
Allahabad – 211 014

Counsel for the applicant (s) : Mr. SK Choudhury, Ld. Adv.

Counsel for the Respondent (s) : Mr. Satyendra Agrawal, Ld. Adv.

ORDER

PER LT GEN GAUTAM MOORTHY, PVSM, AVSM, VSM, ADC, MEMBER (ADMINISTRATIVE)

Facts of the Case

1. This M.A. (M.A. No. 186/2016) has been filed under Section 22 (2) of The Armed Forces Tribunal Act, 2007 seeking condonation of delay in filing O.A. (Appeal) No. 03/2016 assailing the order of the Summary Court Martial (SCM) of the applicant who was sentenced to 3 months Rigorous Imprisonment in jail and dismissal from service on 27.01.1995. As the O.A. was filed on 07.11.2016, there constituted a delay of 21 years, 3 months and 10 days. The applicant states that on 16.02.1995, he had submitted a petition before the Chief of the Army Staff, but did not get any response. Subsequently, in March 2016, on the advice of his Ld. Counsel, he preferred a RTI application

requesting for a copy of the SCM proceedings and thereafter filed a petition under Army Act Section 164 (3) to the Chief of the Army Staff on 20.06.2016. Counsel for the applicant stated that the applicant finally received the disposal order of his petition through OIC, EME Records vide letter No. 14564353A/T-2/DIS/NE-II dated 28 July 2016 (Impugned Order) (Page 19 of the O.A.) rejecting his case for remission of sentence and grant of pension.

Arguments by the Counsel for the Applicant

2. Ld. Counsel for the applicant argued that since the Chief of Army Staff failed to pass any Speaking Order in response to the petition submitted by the applicant under Army Act Section 164(2), and there is strong merit in the case, the delay ought to be condoned. He cited a number of judgments wherein the Hon'ble Supreme Court has held that if there is strong merit in the case, then delay should not be the ground to refuse justice to the litigants. Those are:-

> (A) ***In Collector, Land Acquisition, Anantnag and another vs. Mst Katiji and others, 1987 (2) SCC 107*** *it was held that : -*
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> *"The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matter on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which sub-serves the ends of justice – that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has*

been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that : -

(a) Ordinarily a litigant does not stand to benefit by lodging an appeal late.

(b) Refusing to condone the delay can result in a meritorious case being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

(c) 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a national common sense pragmatic manner.

(d) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

(e)There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs serious risk.

(f) It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

(B) *In* ***O.P. Kathpalia vs. Lakhmir Singh, 1984 (2) R.C.R. (Rent) 201 : 1984 (4) SCC 66,*** a bench of three Judges of the Hon'ble Supreme Court held that,*"if refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay."*

(C) *In* ***N. Balakrishna vs. M. Krishnamurthy, (1988) 7 SCC 123****, the Hon'ble Supreme Court held that, "A court knows refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delays in approaching the Court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut door against him. If the explanation does not smack of mala fide or it is not put forth as part of dilatory strategy, the court must show utmost consideration to the suitor".*

(D) *In* ***Nripati Bhushan Sengupta vs. Union of India & Ors, T.A. No. 07 of 2010, Order dated 17 May 2010*** *this Tribunal has held "Simply because there was inordinate delay, that cannot be a ground for*

rejection of the application. We must not forget that it is settled law that in case a pension the cause of action continues from month to month".

(E) *In* ***Union of India and others vs. Tarsem Singh, (2008) 8 SCC 648*** *the Hon'ble Supreme Court has laid down the following principles:-*

"To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on continuing wrong, relief can be granted even if there is long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But, there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment of re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But, if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of latches / limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating recurring / successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition".

3. The Ld. Counsel for the Respondents on the other hand vehemently argued and opposed condonation of delay on the grounds that the inordinately long delay of 21 years, 3 months & 10 days has been not properly explained and are not supported by the judgments quoted for this condonation as there has been no miscarriage of justice. That apart, this is not a case of a continuous cause of action as in pension related cases and no injustice has been done to the applicant. The Ld. Counsel has taken recourse to the following Judgments.

4. In **Civil Appeal Nos. 8183-8184 of 2013 (Arising out of S.L.P. (C) Nos. 24868-24879 of 2011) Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and Others** decided on **13 Sep 2013**, the Hon'ble Judges referred to a number of Judgments stating that,

> *"5. Before we delve into the factual scenario and the defensibility of the order condoning the delay, it is seemly to state the obligation of the court while dealing with an application for condonation of delay and the approach to be adopted while considering the grounds for condonation of such colossal delay.*
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> *6.* In **Collector, Land Acquisition, Anantnag and another vs. Mst. Katiji and others' (1987 (2) SCC 107–** *a two Judge Bench observed that the legislature has conferred power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on merits. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which sub-serves the ends of justice, for that is the life-purse for the existence of the institution of courts. The learned Judges emphasized on adoption of a liberal approach while dealing with the applications for condonation of delays ordinarily a litigant does not stand to benefit by lodging an appeal late and refusal to condone delay can result in an meritorious matter being thrown out at the very threshold and the cause of justice being defeated. It was stressed that there should not be a pedantic approach but the doctrine that is to be kept in mind is that the matter has to be dealt with in a rational commonsense pragmatic manner and cause of substantial justice deserves to be preferred over the technical considerations. It was also ruled that there is no presumption that delay is occasioned deliberately or on account of culpable negligence and that the courts are not supposed to legalize injustice on technical grounds as it is the duty of the court to remove injustice. In the said case the Division Bench observed that the State which represents the collective cause of the community does not deserve a litigant-non-grata status and the courts are required to be informed with the spirit and philosophy of the provision in the course of interpretation of the expression "sufficient cause".*
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> *7.* In **G. Ramegowda, Major and others vs. Special Land Acquisition Officer, Bangalore, Venkatachaliah, J.** (as His Lordship then was), speaking for the Court, his opined thus : -
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> *"The contours of the area of discretion of the courts in the matter of condonation of delays in filing appeals are set out in a number of pronouncements of this Court. See : Ramlal, Motilal and Chhotelal V. Rewa Coalfiled Ltd.; Shakuntala Devi Jain v. Kunbtal Kumari; Concord of India Insurance Co. Ltd. V. Nirmala Devi; Lala Mata Din v. A. Narayanan' Collection, Land Acquisition v. Katiji etc. There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fide on the part of its counsel is no reason why the opposite side should be exposed to a time-*

barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression 'sufficient cause' in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay."

8. In ***O. P. Kathpalia vs. Lakhmir Singh (dead) and others****, the Court was dealing with a fact-situation where the interim order passed by the Court of first instance was on interpolated order and it was not ascertainable as to when the order made. The said order was under appeal before the District Judge who declined to condone the delay and the said view was concurred with the High Court. The Court, taking stock of the facts, came to hold that if such an interpolated order is allowed to stand, there would be failure of justice and, accordingly, set aside the orders impugned therein observing that the appeal before the District Judge deserved to be heard on merits.*

9. In ***State of Nagaland vs. Lipok Ao and others,*** *the Court, after referring to* ***New India Insurance Co. Ltd. vs. Shanti Misra, N. Balakrishnan v. M. Krishnamurthy, State of Haryana vs. Chandra Mani*** *and* ***Special Tehsildar, Land Acquisition v. K. V. Ayisumma****, came to hold that adoption of strict standard of proof sometimes fails to protect public justice and it may result in public mischief.*

10. In this context, we may refer with profit to the authority in ***Oriental Aroma Chemical Industries v. Gujarat Industrial Development Corporation and another,*** *where a two-judge Bench of this Court has observed that the law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept live for a period fixed by the legislature. To put if differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. Thereafter, the learned Judges proceeded to state that this Court has justifiably advocated adoption of liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate.*

11. ***In Improvement Trust, Ludhiana v. Ujagar Singh and others,*** *it has been held that while considering an application for condonation of delay no straitjacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not. It has been further stated therein that each case has to be weighed from its facts and the circumstances in which the party action and behaves.*

12. A reference to the principle stated in ***Balwant Singh (dead) vs. Jadgish Singh and others*** *would be quite fruitful. In the said case the Court referred to the pronouncements in* ***Union of India v. Ram Charan, P.K. Ramachandran V. State of Kerala*** *and* ***Katari Suryanarayana v. Koppisetti Subba Rao*** *and stated thus : -*

> *"25. We may state that ten in the term "sufficient cause" has to receive liberal construction, it must squarely fall within the*

concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of "reasonableness" as it is understood in its general connotation.

26. The law of limitation is a substantive law has definite consequences on the right and obligation of a party to arise. These principles should be adhered to an applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly."

13. Recently, in ***Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai,*** *the learned Judges referred to the pronouncement in* ***Vedabai v. Shantaram Baburao Patil*** *wherein it has been opined that a distinction must be made between a case where the delay is inordinate and a case where the delay is of few days and whereas in the former case the consideration of prejudice to the other side will be relevant factor, in the latter case no such consideration arises. Thereafter, the two-Judge Bench ruled thus : -*

"23. What needs to be emphasized is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and log of time is consumed at various stages of litigation apart from the cost.

24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be legitimate exercise of discretion not to condone the delay".

Eventually, the Bench upon perusal of the application for condonation of delay and the affidavit on record came to hold that certain necessary facts were conspicuously silent and, accordingly, reversed the decision of the High Court which had condoned the delay of more than seven years.

14. In **B. Madhuri Goud vs. B. Damodar Reddy**, *the Court referring to earlier decisions reversed the decision of the learned single Judge who had condoned delay of 1236 days as the explanation given in the application for condonation of delay was absolutely fanciful.*

15. From the aforesaid authorities the principles that can broadly be culled out are : -

(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 be fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(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.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed to totally unfettered free play.

(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, behaviour 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 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.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are : -

(a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harboring 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.

(b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(c) Though no precise formula can be laid down regard being had to be concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed of course, within legal parameters."

5. In Armed Forces Tribunal, Regional Bench, Kochi (Sitting Circuit Bench at Para Regimental Training Centre, Bangalore) in **M.A. No. 327/2013 and O. A. No. 83 of 2013) dt. 07.03.2014 in No. 14653111N Ex Sepoy Babanna KD**; the Bench held –

6. It is almost admitted position that the applicant was discharged from the Army service with effect from 31st of July 2007 on the ground of fraudulent enrolment after due inquiry in which he was appropriately heard. So he had knowledge of the dismissal order from the very beginning and as such the limitation to challenge the dismissal order started with effect from 1st of August 2007. The period of three years limitation expired on 31st July 2010. But during that period he did not challenge the dismissal order and remained satisfied. So the contention that the application had no legal independent advice is apparently false.

7. Col (Retd) Bhupinder Singh submitted that when the applicants in T.A. No. 232 of 2010 and other connected matters had been granted reliefs vide their order dated 14th June 2013 rendered by this Bench, the applicant was also entitled to the same reliefs due to being similarly placed persons. In this connection Mr. K. M. Jamaludheen submitted that the applicants in the aforesaid Transferred Applications had been vigilant to their rights after their discharge from service and filed Writ Petitions / Original Applications well within time. So the applicants who had not been vigilant in any way and felt satisfied with the discharge order could not be permitted to claim the benefit of the order rendered by this Bench on the ground of being similarly placed persons. He next contended that in a similar matter viz., S. S. Balu v. State of Kerala, (2009) 2 SCC 479, the Apex Court held that the delay defeats equity. The Apex Court further held that the relief can be denied on the ground of delay even though relief is granted to other similarly situated persons who approached the Court in time. In our view,

"the decision of the Apex Court in the aforesaid matter is squarely applicable in the present matter and as such the applicant cannot be granted any parity of the persons who approached the Tribunal in time and obtained relief".

8. It is true that the applicant, before filing the instant time barred Original Application, sent the legal notice dated 1st July, 2013, but giving of legal notice after expiry of the period of limitation will be of no help to the applicant and on that basis neither the limitation can be extended nor can the delay be condoned.

6. In another case in **M.A. No. 1784 in O.A. No. 2372 of 2012 dated 24.09.2013 in the Armed Forces Tribunal, Regional Bench, Chandigarh at Chandimandir in Balbir Singh vs. Union of India** the Bench held : -

9. *Delay in approaching the court in pension matter has been looked favorably by the Hon'ble Apex Court and other High Courts, however, in the present case having been discharged on completion of terms of engagement. The plea of the petitioner that the cause of action is recurring every month, akin to award of pension, is incorrect and not sustainable.*

10. Keeping in mind the stipulations at Sub Section (2) of 22 of the AFT Act, during the hearing of the petition on the point of limitation the petitioner has failed to elaborate delay in filing the application. Neither were the causes taken up in the petition at Para 3 elaborated upon. We make it clear that we do not mean to insist upon day-to-day or minute-to-minute explanation, but then, conceding all benevolence in favour of the individual, a reasonable promptitude and dispatch is minimum, which is required to be expected and was not forthcoming during the hearing of the case on 04.09.2013.

7. In another case, in the Armed Forces Tribunal, Regional Bench, Chennai in **M.A. No. 11/2013, O.A. No. 16/2013 dt. 12.07.2013 in Singuri Srinivasa Rao vs. Union of India** ruled –

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 Judgments as rendered by the AFT, Regional Bench of Lucknow in O.A. No. Nil (1)/2011 dated 8.8.12, and O.A. No. 55 if 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. 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 condonation of delay of 2871 days is liable to be dismissed. Consequently, the application in OA No. 16 of 2013 is also liable to be dismissed."

8. In yet another case, this Bench in **M.A. No. 3/2015, dt. 21.08.2015 in Ex. No. 14819251W Sep (MT) Joydeep Biswas vs. Union of India** ruled –

"6. From the material facts on record, it appears that the applicant has not explained the fact with materials trust worthy evidence of the period from 2003 to 2005, when he has permitted to resume duty. Once the applicant was declared deserter in 2003, then there was no option with the respondent to make any communication or request during the later period for resumption of duty.

7. The applicant did not submit any proof about the illness of his father and mother, which may inspire confidence. Even otherwise in case his wife deserted him, it was because of his own conduct. The services in Army requires discipline and hard working. In case the applicant would not have avoided to discharge duty in Army by taking leave or overstaying the leave, the wife would have not left him. It appears that because of climatic condition and hardship which an army personnel faces while working in J&K, the applicant deliberately overstayed the leave, though the findings of deliberate and overstaying the leave for years makes out a case to draw inference that the Army Personnel concerned is not tough enough to face the hardship of serving in the Army.

8. No material has been brought on record to explain the day to day events in preferring the present OA. The total period of ailments of father and mother of the applicant and of himself has not been pleaded in the MA. It shows that the applicant has moved the application for the purpose of condonation of delay, when almost 9 years have passed. Such deliberate attempt on the part of the applicant seems to be unfair practice. Pleadings must be based on correct disclosure of fact and instead of concocted fact. Such action seems to be abuse of process of law. It seems that the respondent authorities have rightly rejected the Mercy Petition by not contending the delay and according to merit as discussed elaborately.

9. The learned counsel for the applicant had invited our attention to the case of ***State of Haryana vs. Chandra Mani (196 AIR 1623),*** *where the Hon'ble Supreme Court while considering the application for condonation of delay opined that every day's*

delay must be explained does not mean that a pedantic approach should be made. The doctrine must be applied in a rational common sense pragmatic manner. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserved to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberate, or on account of culpable negligence, or on account of mala fides. There is no dispute over the proposition of law that the delay in filing the application depends on various factors which included commission and omission on the part of the applicant / petitioner. On the ill-advise of the Counsel with certain assurance, even when there is no explanation, changing of mind to approach the Court / Tribunal with some exception on the assurance given, the Court should be cautious in passing the orders in the matter of condonation of delay that too when a petition is preferred almost after decade, which depends on the facts and circumstances of each case.

10. Section 5 of the Limitation Act deals with sufficient cause. Though liberal approach should be adopted for the purpose of condonation of delay but in case the delay cause in filing the application or appeal is inordinate, then the Court / Tribunal should see the entire period of delay has been explained and while allowing or rejecting, a reasoned order should be passed."

9. Ld. Counsel for the applicant while subsequently submitting his written notes of arguments stated that the applicant, has prayed for the condonation of delay and also he deserves to be granted service pension in view of the strong merits of the case.

10. He countered the judgments put forth by the Respondents' Counsel and stated that in **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Others (supra),** it was a case of non-compliance of a Court Order and hence cannot be equated with the case of the Applicant in M.A. No. 186 of 2016 and OA (Appeal) No. 3 of 2016. Further, the principles laid down by the Hon'ble Supreme

Court at Para 15 of the above cited judgment are in fact in favour of the case of applicant. He further controverted the other judgments relied upon by the Respondents' Counsel. In **Balbir Singh vs. UoI (supra)**, he stated that the applicant had prayed for condonation of delay on the basis of the merits of the case also and not solely because he has prayed for grant of pension. He also stated that the cases of **Ex-Sep KT Babanna KD vs. UoI & Ors, Singuru Srinivasa Rao vs. UoI & Ors** and that of **Joydeep Biswas vs. UoI & Ors (supra)** too are entirely different from that of the applicant. He emphasized that the punishment awarded to the applicant was *"shockingly disproportionate to the alleged offence which clearly showed bias of the Commanding Officer perhaps with an exuberance to give exemplary punishment."* He concluded by stating that since the impugned order of the EME Records order was of 28 Jul 16 and the O.A. was filed on 07 Nov 16, there was no delay as per Sec 22 of the AFT Act, both de facto as well as de jure.

11. We have heard the arguments of both the parties as well as studied all the judgments stated above. At the very outset, reference is made to Armed Forces Tribunal Act, 2007 Sec 22 which is set out as under:-

22. Limitation. -

(1) The Tribunal shall not admit an application –

(a) 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 such final order has been made;

(b) in a case where a petition or a representation which 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 (2), if the Tribunal is satisfied that the applicant had sufficient cause for not making the application within such period.

12. It is clearly seen that after the applicant submitted his application to the Chief of the Army Staff on 16.02.1995, he did not follow up his application. After a considerable amount of time, he approached his counsel only on 16 Mar 16 and then forwarded an RTI application for a copy of the SCM proceedings on 15 Apr 16. Thereafter on 20 Jun 16, he submitted an application to The Chief of the Army Staff, on whose behalf, his application was turned down by EME Records vide letter No.

14564353A/T-2/DIS/NE-II dt. 28.07.2016 (Page 19 of the O.A. (Appeal). The Bench notes that there is no explanation whatsoever for the delay covering this period between February 1995 to 20.06.2016. We find that no sufficient cause exists for not making the application within such period. It is evident that the cause of action occurred on 27.1.1995, the date of award of punishment to the applicant and thus the delay is well beyond the period prescribed in Section 22 of the Armed Forces Tribunal Act, 2007. The instant MA is conspicuously silent on this aspect.

13. The above quoted catena of judgments too very clearly stress upon the fact that the delay is to be explained and that there exists a period of limitation that cannot be ignored. It is evident that no such explanation for the condonation of delay of 21 years, 3 months and 10 days has been preferred and hence, condonation of delay, cannot be accepted as a matter of right or equity. *"Delay defeats equity"* as has been quoted above, is a principle that cannot be given a go by. The Hon'ble Supreme Court has laid down guiding principles for courts to consider while examining cases for condonation of delay by stating the *"adoption of liberal approach in condoning the delay of short duration and a stricter approach where the delay is*

inordinate." and *"If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly."* Also, *"The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed to totally unfettered free play."*

14. There is no doubt in our minds that "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice. However, condonation of such a long and unexplained delay would mean a grave miscarriage of justice which we do not wish to legalise. Also, as noted by the Hon'ble Apex Court, *"gross inaction or lack of bona fide on the part of its counsel is no reason why the opposite side should be exposed to a time-barred appeal."* Moving an application for condonation of delay after more than 21 years is, to our mind, an abuse of the process of law. It is not a case of pension, the cause of which recurs from month to month that is being initially pleaded but that of setting aside a SCM, the cause of action of which occurred in the year 1995. Only after this bar is traversed, can any case for pension be

considered. Hence the judgments cited in support of the case for pension are not *ad rem* and hence not applicable.

15. We once again quote the Hon'ble Supreme Court in **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Others** (supra):-

> *22.....The Division Bench of the High Court has failed to keep itself alive to the concept of exercise of judicial discretion that is governed by rules of reason and justice. It should have kept itself alive to the following passage from* ***N. Balakrishna (supra)*** *: -*
>
> > *"The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time."*

16. Hence, we conclude that M.A. No. 186 of 2016 for condonation of delay of 21 years 3 months and 10 days is liable to be dismissed. Thus, the M.A. is hereby dismissed.

17. In the result, the Original Application (O.A. (Appeal) No. 03/2016) too is also liable to be dismissed and hence, dismissed accordingly, without going into the merits of the case.

18. No order as to costs.

19. A plain copy of this Order to be supplied to both parties by the Tribunal Officer upon observing all usual formalities.

(LT GEN GAUTAM MOORTHY)
MEMBER (ADMINISTRATIVE)

(JUSTICE INDIRA SHAH)
MEMBER (JUDICIAL)

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