

Court No. - 1

Case :- WRIT - A No. - 10144 of 2023

Petitioner :- No. 14352206f Ex Gnr Ramesh Kumar

Respondent :- Union Of India Thru. Secy. Ministry Of Defense , New Delhi And 5 Others

Counsel for Petitioner :- Raj Kumar Mishra

Counsel for Respondent :- A.S.G.I.

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Jaspreet Singh,J.

Heard learned counsel for the petitioner. Notice on behalf of the respondents has been accepted by the office of the Deputy Solicitor General of India.

The instant petition has been preferred by the petitioner assailing the order passed by the Armed Forces Tribunal, Regional Bench, Lucknow in Original Application No.306/2022 along with Application bearing MA No.358/2022 dated 27.04.2022 whereby the Tribunal has rejected the application for condonation of delay, so also the original application.

The submission of the learned counsel for the petitioner is that the petitioner had claimed the relief seeking quashing of the order dated 22.01.2021 and for grant of disability pension from the date of retirement of the petitioner i.e. 25.12.1985. The said original application filed before the Armed Forces Tribunal, Regional Branch, Lucknow was also accompanied by a prayer seeking condonation of delay.

It is considering the said application, the Armed Forces Tribunal found that the cause shown for delay in moving the original application after 33 years has not been adequately explained. Accordingly, it was rejected.

The submission of the learned counsel for the petitioner is that the Tribunal has taken a harsh view and refused to condone the delay whereas the cause shown by the petitioner that he was suffering from schizophrenia between 25.12.1985 to 05.10.2020, hence, for the said reason he could not approach the Court. This cause did not find favour of the Tribunal which as per the petitioner the Tribunal ought to have taken a lenient view and it is further submitted that the issue of condonation of delay is to be viewed liberally and as far as possible a lis must be decided on merits.

Shri S.B. Pandey, learned Senior Counsel and Deputy Solicitor General of India assisted by Shri Varan Pandey, learned counsel appearing for the respondents has submitted that the original application was delayed by 33 years, 8 month and 20 days and by merely making a fleeting statement that the petitioner was suffering from schizophrenia from 25.12.1985 to 05.10.2020 was not adequately substantiated the delay and it could not be explained. It is in the aforesaid backdrop, it is submitted that the Tribunal has not committed any error and as such the petition deserves to be dismissed.

We have heard rival submissions of the learned counsel for the parties and also perused the material on record.

At the outset, it may be stated that it is not the length of delay which is material rather it is the sufficiency of cause which is to be seen.

It may be true that even small delay if not adequately explained can be refused whereas long delay if sufficiently explained can be condoned.

It is considering the aforesaid fact and noticing that by a bald statement the delay of 33 years, 8 months and 20 days was sought to be explained which needless to say required appropriate explanation which was not done.

The Apex Court in **Postmaster General and others v. Living Media India Limited and another, (2012) 3 SCC 563** has also taken note of the fact that it is not in all cases that the delay is to be condoned without looking into the sufficiency of cause.

Having considered the material available on record and even if the matter is to be seen with liberal view even then, this Court is unable to persuade itself to condone the delay of 33 years, 8 months and 20 days merely on asking and without appropriate explanation.

This Court further finds that the impugned order passed by the Tribunal itself is dated 27.04.2022 and even the same has been assailed almost after a year and a half and it also does not go well inasmuch as even though there is no limitation for filing a writ petition but the concept of laches does apply and if not explained the writ Court may not intervene as exercise of powers under Article 226 of the Constitution of India is discretionary.

For all the aforesaid reasons, this Court does not find that there is any error in the order passed by Armed Forces Tribunal,

Regional Bench, Lucknow dated 27.04.2022 passed in Original Application No.306/2022 along with Application bearing MA No.358/2022. Accordingly, the petition is **dismissed**.

Costs are made easy.

(Jaspreet Singh, J.) (Attai Rahman Masoodi, J.)

Order Date :- 22.12.2023

Rakesh/-