

CWP-2790-2024

[1]

2024:PHHC:165750-DB



In the High Court of Punjab and Haryana at Chandigarh

[215]

CWP-2790-2024

Date of Decision: 11.12.2024

NO.4454124 P EX. HAV RAMA SINGH

..... PETITIONER

VERSUS

UNION OF INDIA AND OTHERS

.....RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MS. JUSTICE KIRTI SINGH**

Present: Mr. Ashok Bhardwaj, Advocate for the petitioner.

Mr. Maneesh Bali, Sr. Advocate for respondents No.1 to 3.

SURESHWAR THAKUR, J. (ORAL)

1. Through the instant writ petition, a challenge is made to the order dated 20.12.2023 (Annexure P-3) made upon M.A. No. 2455/2023 and O.A.1893/2023, thus, by the Armed Forces Tribunal, Chandigarh Bench, Chandimandir (hereinafter referred to as the AFTC), whereby upon a petition filed by the present petitioner under Section 14 of the Armed Forces Tribunal Act, 2007, thus asking for relief for releasing of promotion to the rank of Naib/Sub alongwith the consequential benefits i.e. the pensionary benefits, rather a dismissal order became passed. The relevant extract of the impugned order dated 20.12.2023 (supra) reads as under:-

*“A perusal of the application shows that no reason whatsoever has been given for condoning the delay. All that has been said is that being a pension matter, there is a continuing cause of action. In support of this, reference has been made to the judgment of the Supreme Court dated 11.10.2023 passed in S.L.P. (Civil) No.16238 of 2017 **BICHITRANANDA BEHERA VS. STATE OF ORISSA AND OTHERS.***

A perusal of the relief clause shows that the applicant has sought promotion to the rank of Naib Subedar w.e.f. 01.01.1990 and consequential benefits. Promotion was denied in the year 1990 and the applicant had sought pre-mature discharge on compassionate



*grounds. Thus, the cause of action arose when the applicant was discharged from service instead of being promoted. The said cause of action is not a continuing one as has been sought to be argued by learned counsel for the applicant. Thus, the judgment in **BICHITRANANDA BEHERA (supra)** cannot grant any succour to the applicant because the said judgment holds that delayed service claim will be rejected on the ground of delay and laches where a writ petition is filed.*

In view of the above, the application for condonation of delay is dismissed.”

O.A. No.1893 of 2023

Since the delay application has been dismissed, the OA is also dismissed.”

2 Readings of the above extracted impugned order discloses, that the Learned AFTC, thus not only made an order of dismissal upon OA No.1893 of 2023 but also made a dismissal order upon MA No.2455 of 2023. Subsequently, through a common order passed thereons, the Learned AFTC concluded, that the petitioner’s claim was a time barred claim, as such, a dismissal order was made upon supra.

3. In the learned AFTC proceeding to make a common decision upon MA No.2455 of 2023 and also upon O.A. No. 1893 of 2023, thus has departed from the procedure established by law. The reason for so concluding arises from the trite factum that MA No.2455 of 2023 was an application, cast under Section 22 of the Armed Forces Tribunal Act, 2007, wherein, the applicant had set forth grounds for seeking condonation(s) of the occurrence of the relevant delay, whereas, on the other hand O.A. No.1893 of 2023 enclosed a relief for setting aside the afore dis-affirmative order.

4. Consequently, unless the entire procedure relating to the makings of a valid rejection order over the said MA, became initially adopted, thereupon alone the OA supra was required to become subsequently decided.



In other words, the AFTC was required to initially either accept the said MA or was required to be rejecting the grounds set forth in MA supra, whereafter dependent, on a decision becoming made on the MA supra, thus the AFTC was subsequently required to be making orders either accepting or rejecting OA supra.

5. Moreover, reiterately only thereafter, the learned AFTC was required to accordingly proceed to, on the subsequent date make an order upon OA bearing No.1893 of 2023, to the extent that it requires to be either rejected or requires to become accepted.

6. The learned AFTC however proceeded in a most summary and sketchy manner, besides with a complete non-application of mind to the necessity of adoptions of the hereafter procedure, rather imperatively required to be become undertaken for initially deciding M.A. No. 2455 of 2023, thus, has inaptly made a common order upon the above MA and upon OA No.1893 of 2023.

7. The relevant procedure requiring adoption became comprised in initially the AFTC asking for a response from the respondents to the application seeking condonation of delay. Subsequently, issues were required to be struck upon the pleadings whereafter, evidence was required to be asked to be adduced thereons, thus by the litigant concerned. Subsequently, a well reasoned decision was required to be passed on the said application. The necessity of passing a reasoned order on the MA supra, arose from the factum that the petitioner has raised a time barred claim. Since the said plea became accepted. Resultantly an utmost dire necessity became engendered *vis-a-vis* adoption being made *vis-a-vis* the procedure supra.

8. The evident non-adoption of the above procedure rather has led



justice, besides there being complete non adherence to the principles of natural justice, to the extent that, despite the present petitioner may have put forth cogent grounds in the MA No.2455 of 2023, thus in explication qua the occurrence of the relevant delay, yet the applicant becoming not been granted the fullest opportunity to prove the occurrence of the said delay.

9. The above has resulted in the consequent thereto order also becoming passed in the connected M.A. No.2455 of 2023. In consequence, the impugned order is quashed and set aside and the *lis* is remanded to the Armed Forces Tribunal concerned, whereons, after initially recording a decision upon M.A. No.2455 of 2023, but only after a response thereto becoming invited from the present respondent, besides after issues being struck on the contested pleadings, moreover, after the fullest opportunity becoming granted to the litigants concerned to discharge the apposite evidence adducing burden, thus to subsequently make a well reasoned decision upon OA No.1893 of 2023. In pursuance thereto, the learned AFTC concerned is directed to make a well reasoned decision even upon the OA supra. This order of remand shall be complied within a period of 6 months from today but after hearing all affected persons concerned, besides after granting opportunity(ies) (supra) to all concerned.

Disposed of.

(SURESHWAR THAKUR)
JUDGE

(KIRTI SINGH)
JUDGE

December 11, 2024
Anjal

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No