



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CWP-20347-2025 (O&M)

Decided on : 25.08.2025

GURBHEJ SINGH

. .Petitioner

Versus

UNION OF INDIA AND OTHERS

. . . Respondents

**CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI
HON'BLE MR. JUSTICE VIKAS SURI**

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

Mr. Vibhor Bansal, Senior Panel Counsel-UOI with
Mr. Ishank Bansal, Advocate for respondent No. 1 & 2.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, the challenge is to the impugned order dated 30.09.2024 (Annexure P-6) passed by respondent No. 3-Armed Forces Tribunal, Regional Bench, Chandigarh (hereinafter referred to as Tribunal), by which, the Original Application No. 3204 of 2017 filed by the petitioner has been dismissed by the Tribunal on the ground of delay, which is causing prejudice to the petitioner.

2. Learned counsel for the petitioner argues that though there is a delay of 8072 days in approaching the Tribunal, but the same should be considered with sympathy as the petitioner met with an accident on 30.10.1996, which led to further admission in hospital and as he was wrongly Court Martial and imposed the punishment of imprisonment as well as dismissal from service vide order dated 05.09.1995, hence, in the facts and circumstances of the present case, the delay of 8072 days in approaching the Tribunal should have been condoned rather than dismissing the said application filed by the petitioner.

3. We have heard learned counsel for the parties and have gone

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through the case file with their able assistance.

4. It may be noticed that the aggrieved person has to be more vigilant about his right and should approach the authorities concerned as and when he/she feels aggrieved rather than delaying the said issue.

5. In case, the circumstances are beyond the control of a person, the delay can be condoned but where despite every knowledge, the employee does not raise any grievance for a long stretch of time then the Courts should be reluctant to interfere in such situation.

6. The facts of the present case are that the petitioner was dismissed from service after a Summary Court Martial on 05.09.1995. The Summary Court Martial imprisoned the petitioner for a period of three months and also dismissed him from service. After completing the sentence, no action was taken by the petitioner for a period of 16 years.

7. An Original Application No. 1301 of 2011 was filed by the petitioner challenging the order of dismissal dated 05.09.1995. The said Original Application No. 1301 of 2011 was also withdrawn by the petitioner with liberty to file a fresh one and for another period of six years, no such action was ever taken by the petitioner and ultimately, an Original Application No. 3204 of 2017 was filed by the petitioner.

8. Keeping in view the fact that after a period of 22 years, the original application No. 3204 of 2017 was filed by the petitioner challenging the order of dismissal dated 05.09.1995 and the said application has been dismissed by the Tribunal on the ground of delay of 8072 days as no justifiable reason has been shown to the Tribunal to condone the said delay so as to hear the original Application No. 3204 of 2017 on merit.

9. As per the settled principle of law settled by the Hon'ble Supreme Court of India in **Civil Appeal No.1852 of 1989 with Civil Appeal**



No. 4772 of 1989 titled as 'State of Punjab and others vs. Gurdev Singh and Ashok Kumar, decided on 21.08.1991, that every order passed in case, causes prejudice, has to be challenged within a period of three years.

The relevant paragraphs of the said judgment are as under:-

“ 4. First of all, to say that the suit is not governed by the law of Limitation runs afoul of our Limitation Act. The statute of limitation was intended to provide a time limit for all suits conceivable. Section 3 of the Limitation Act provides that a suit, appeal or application instituted after the prescribed "period of limitation" must subject to the provisions of Sections 4 to 24 be dismissed although limitation has not been set up as a defence, Section-2(J) defines the expression "period of limitation" to mean the period of limitation prescribed in the Schedule for suit, appeal or application. Section 2(J) also defines, "prescribed period" to mean the period of limitation computed in accordance with the provisions of the Act. The Court's function on the presentation of plaint is simply to examine whether, on the assumed facts the plaintiff is within time. The Court has to find out when the "right to sue" accrued to the plaintiff. If a suit is not covered by any of the specific articles prescribing a period of limitation, it must fail within the residuary article. The purpose of the residuary article is to provide for cases which could not be covered by any other provision in the Limitation Act. The residuary article is applicable to every variety of suits not otherwise provided



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for. Article 113 (corresponding to Article 120 of the Act 1908) is a residu- ary article for cases not covered by any other provisions in the Act. It prescribes a period of three years when the right to sue accrues. Under Article 120 it was six years which has been reduced to three years under Article 113. According to the third column in Article 113, time commences to run when the right to sue accrues. The words "right to sue" ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the 'cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is insti- tuted (See: (i) Mt. Bole v. Mt. Koklam and Ors., AIR 1930 PC 270 and (ii) Gannon Dunkerley and Co. v. The Union of India, AIR 1970 SC 1433).

8. *It will be clear from these principles, the party ag- grieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation. If the statutory time limit expires the Court cannot give the declaration sought for.*

11. *The Allahabad High Court in Jagdish Prasad Mathur and Ors. v. United Provinces Government, AIR 1956 All 114*



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has taken the view that a suit for declaration by a dismissed employee on the ground that his dismissal is void, is governed by Article 120 of the Limitation Act. A similar view has been taken by Oudh Chief Court in Abdul Vakil v. Secretary of State and Anr., AIR 1943 Oudh 368. That in our opinion is the correct view to be taken. A suit for declaration that an order of dismissal or termination from service passed against the plaintiff is wrongful, illegal or ultra vires is governed by Article 113 of the Limitation Act The decision to the contrary taken by the Punjab & Haryana High Court in these and other cases ((i) State of Punjab v. Ajit Singh, [1988] 1 SLR 96 and (ii) State of Punjab v. Ram Singh, [1986] 2 SLR 379 is not correct and stands overruled.”

10. Learned counsel for the petitioner has not been able to dispute the said settled principle of law, as settled by the Hon’ble Supreme Court of India in Gurdev Singh’s case (supra).

11. When the said judgment passed in Gurdev Singh’s case (supra) is applied in the case of the petitioner, the order of dismissal from service of the petitioner is of 05.09.1995 and to challenge the said order of dismissal, the first step is taken by the petitioner after a period of 16 years which proceedings were also withdrawn by the petitioner and the same was again instituted after a period of 22 years of the passing of the order of the dismissal.

12. Further, the delay can only be condoned in case the justifiable reason has been given by the petitioner but in the present case, no justifiable



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reason has been brought on record that the delay of 22 years in approaching the authority was beyond the control of the petitioner.

13. Keeping in view the above facts and circumstances recorded herein above, no ground is made out for any interference by this Court in the present petition, **hence, the present petition stands dismissed.**

14. Pending civil miscellaneous application, if any, stands disposed of.

**(HARSIMRAN SINGH SETHI)
JUDGE**

**(VIKAS SURI)
JUDGE**

25.08.2025

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Whether speaking/reasoned: Yes/~~No~~

Whether Reportable: ~~Yes~~/No