

**IN THE ARMED FORCES TRIBUNAL
REGIONAL BENCH, GUWAHATI.**

M.A. 34 of 2017
&
OA(A) 42 OF 2017.

**Raghubir Ram
S/o Sri Dharma Ram,
R/o Vill. Logion,
P.O. Jakhni Dist. Pithoragarh,
Uttarakhand.**

.....Applicant.
By legal practitioners
for Applicant.
Ms Suchitra Bora.

-Versus-

- 1. The Union of India,
Represented by the Secretary,
Ministry of Home Affairs,
New Delhi- 110011.**
- 2. The Director General of Assam Rifles,
Assam Rifles Head Quarter,
Shillong, Meghalaya.**
- 3. The commanding Officer,
16th Assam Rifles,
C/o 99 APO.**

.....Respondents
By legal practitioners
for Respondents.
Mr. Nilutpal Baruah, CGSC.

PRESENT
HON`BLE MR. JUSTICE V.K.SHALI, MEMBER (J)
HON`BLE LT GEN C.A.KRISHNAN, PVSM, UYSM, AVSM, MEMBER (A)

ORDER
24.10.2017

(By Hon`ble V.K.Shali, J.)

This is an original application filed by the applicant by virtue of which he has prayed for setting aside the order of dismissal dated 28th December, 2000 passed by the Commandant 16th Assam Rifles in a Summary Court Martial. It would be

pertinent to mention that at the time of dismissal the applicant have rendered 4 years 10 months and 4 days continuous service as a Cook.

2. Be that as it may, along with the original application the applicant has filed a Miscellaneous Application seeking condonation of 5 years 2 month's delay in filing the O.A.

3. We have heard the learned Counsel for the applicant and gone through the record.

4. The applicant has joined as a Rifleman/Cook in the 16 Assam Rifle on 24th February, 1996. The applicant was tried under Section 38 of the Army Act for being deserter as he, after availing the leave, did not report for duty and had to be arrested.

5. The case of the applicant is that he had no intention to desert but was always available for the duty. Be that as it may, this is the defence taken by the applicant. The question which arises at this stage is whether the delay of 5 years 2 months deserves to be condoned for entertaining the application. The reasons for delay given by the applicant in the application is that after the order of dismissal dated 28th December, 2000 he had filed an appeal before the DG, Assam Rifles which was not decided. The applicant was constrained to file Writ petition which came before the Single Judge of Hon`ble Uttarakhand High Court, seeking a direction that the DG be directed to decide the appeal. This Writ petition bearing No. 1116/2002 had become infructuous as in the meantime the DG had dismissed the appeal of the applicant on 23rd April, 2002. The Writ petition was dismissed on withdrawal with liberty to assail the said order passed by the DG. The order of the DG was assailed again in the Hon`ble Uttarakhand High Court in the year 2008 which came to be decided on 16th July, 2012 holding that the High

Court lacks the jurisdiction. Accordingly, after waiting from July, 2012 the applicant has filed the present Original Application on 7th September, 2017 on the ground that the applicant was having financial hardship and family trouble and, therefore, he was not in a position to file the present O.A. in time. Another reason which he has given for belated filing of the OA is that his Counsel, Naryan Sing Neghi, never informed him about the dismissal of the Writ petition. It is accordingly prayed that the delay be condoned and the Original application be heard on merit.

6. We have considered the submissions made by the learned Counsel for the applicant, gone through the record. However, we find ourselves unable to persuade for condoning the delay in filing the Original Application on merit after 17 years of dismissal order having been passed. This is on account of fact that not only the applicant has not been able to give any sufficient cause for condonation of delay but he has been equally guilty of gross negligence in prosecuting the matter. The applicant is calculating the delay of filing the present application from the date of dismissal of the Writ petition by the Hon`ble Uttarakhand High Court in the year 2012. He ought to have acted with due diligence, prior to that also the applicant has been acting with gross negligence. This is evident from the fact that the order of dismissal was passed in 2000, his appeal was dismissed in 2002 and yet he chose to file the Writ petition before the Hon`ble Uttarakhand High Court after a lapse of 6 years only in 2008. Therefore, the applicant has been going into slumber in between and has woken up now to rack up a scale of claim which already become fatal by lapse of time. Even for the sake of argument it is assumed that the original application if entertained and the dismissal order is set aside, it is not going to give any benefit to the applicant because he has just rendered 4 years 10 month`s service which will not give him any pensionary benefit. Therefore, we fail to understand what is the motive on the part of the applicant in assailing the order of dismissal so belatedly. We feel that no reasonable explanation has been furnished by the applicant for the delay which has occurred in phases, both before the filing of the application and before filing

of the Writ petition before the Hon`ble Uttarakhand High Court. Accordingly, the delay if at all accounted for is to be from the date of dismissal of the application itself, that is a delay of 17 years, which stands totally unexplained.

7. For this reason we feel the Original application is hopelessly barred by limitation. No reasonable explanation has been given and accordingly the application seeking condonation of delay is dismissed.

8. Since the condonation of delay application itself is dismissed, therefore, the original application can also not be entertained and is being dismissed.

MEMBER (A)

MEMBER(J)

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