

IN THE ARMED FORCES TRIBUNAL

REGIONAL BENCH, GUWAHATI.

OA (A)43-2017

MA- 35/2017

PRESENT

HON`BLE MR. JUSTICE V.K.SHALI, MEMBER(J)

HON`BLE LT GEN C.A.KRISHNAN, MEMBER (A)

**Khem Prasad Gamier
Ex No. 1241 Rfn /GD
12th Assam Rifles C/099 APO
Village Kharkhgola
PO Kalapahar, Dist. Senapati
Manipur-795122.**

..... **Applicant.**

**By legal practitioners for
Applicant.**

Ms Suchitra Bora

-VERSUS-

- 1. Union of India,
Represented by the Secretary,
Govt. of India, Ministry of Defence
Sena Bhawan, New Delhi – 110011.**
- 2. The Director General of Assam Rifles
Assam Rifles Head Quarter Shillong
Meghalaya-11.**
- 3. Commanding Officer 12 Assam
Rifles C/O 99 APO.**

..... **Respondents..**

**By Legal Practitioner for the
Respondents
Brig N.Deka,(Retd) CGSC**

Date of Hearing : 24.10.2017
Date of Order : **24.10.2017**

ORDER

(V.K.SHALI,J)

The Original Application has been filed by the applicant seeking setting aside the Summary Court Martial dated 30.05.2001 by virtue of which the applicant was dismissed from service. The applicant has also claimed the pensionary and consequential benefits.

[2] Briefly stated, the facts of the case are that the applicant joined the Assam Rifles as Rifleman/General Duty at Imphal Manipur on 27.04.1991. After completing the initial training of 9 months, he was posted in Manipur, Imphal in the year 1996. The allegation against the applicant was the in the second week of March, 1999 the applicant had received a sum of Rs. 95,000.00 for making Bank Drafts of his Copy personnel as per details as given under:

(a) Sub Roshan Lal Rs.30,000/-

(b) Rfn/GD Kamlesh Kumar Soni Rs.36,500/-

(c)Rfn/GD Nar Bahadur Rs.10,000/-

[3] The case of the applicant was that the moment he moved towards the Bank in the market area, two persons in motor cycle had stopped him and robbed him of the money. The applicant claims that he went back to the Unit and reported the matter to Sub Major BB Lama about the incident and he was apprehensive that in case his Commanding Officer comes to know about the incident he would be punished. The applicant was asked to arrange for the money but he failed to do so. He was tried by Summary Court Martial under sections 39(a),52(b) and 52(f) and dismissed from service w.e.f. 30.05.2001.

[4] The applicant has now after a gap of 16 years and 3 months chosen to file the present application assailing his conviction and sentence. The reason as given by the applicant seeking condonation of delay is that he had given the papers as well as legal fees to one Advocate of Manipur High Court by the name of Mr Ibobi Singh and, thereafter, went to his ancestral village at Nepal where his brother was suffering from Nephrological and Kidney problem from 2004-2009. It is stated that despite prolonged treatment of his brother he could not survive and died on 14.11.2009. The applicant was called upon to look after his father and younger brother who was suffering from Hyper Tension and Diabetic. He contacted his Advocate in 2005 -2006 and whereupon he was informed that his case has

been filed. In the year 2009 he was informed by Mrs.P.Ibeyaima Devi that his case has not been filed as Advocate Mr.Iboni Singh has expired and because of which he went to Manipur and met Mr. P.Ibeyama Devi and collected the papers and appointed another counsel to file the case. It is the contention of the counsel that because of the financial hardship and family trouble he was prevented from filing the case earlier and, therefore, the delay may be condoned.

[5] We have heard the learned counsel for the applicant. We have also gone through the records.

[6] The applicant has been admittedly charged with serious offence and dismissed from service way back in the year 2001. The excuse the applicant has given for belated filing of the OA does not seem to be *bona fide* and genuine because any person who would lose his job would not take the matter so lightly to gather the papers pay fees to the counsel and not to follow it up on monthly basis to find as to what had happened to his case. The applicant in the instant case , has been grossly negligent in giving the papers and fees to his counsel ,as if it was the duty of the counsel to pursue the matter with the Court and not his. Any reasonable litigant is expected not only to gather papers and pay fees to the Counsel but also to follow up with his counsel to find out as to what has transpired from

time to time in the case. Simply saying that his brother was suffered from Kidney problem and after submission of papers he went to Nepal is not sufficient. No document on record has been placed to show that his brother was suffering from Kindly ailment. Even he learnt that admittedly the case has not been filed in 2005, yet he did not take up the matter in the right earnest and he gave any plausible explanation for belated filing. He has given an explanation that his brother was suffering from Hyper- tension and Diabetic. Even if in the year 2005 itself he learned that his case was not filed he went to Manipur to collect the papers which amounts to gross negligence on the part of the applicant in not filing the matter in the same year. Even when he had collected the papers in 2009, yet there is no justification to wait for another 7 years to file the OA in 2016 only to file the case. In view of the aforesaid facts, the only conclusion that can be drawn that the explanation which has been given by the applicant with regard to non filing of the OA earlier is only a lame excuse and not of such nature as would make the Court to construe as 'sufficient cause.'

[7] The Apex Court in catena of judgments has interpreted the word 'sufficient cause' which is beyond any control. None of the causes in the instant case is such which was beyond human

control which prevented the applicant from filing the present application.

[8] For the aforesaid reasons we think that the application is hopelessly barred by limitation and no sufficient reason has been given to condone the delay. Accordingly, the application seeking condonation of delay is disallowed.

[9] The misc. application having been disallowed makes the Original Application is barred by limitation.

[10] Hence, both the Misc application and Original application are dismissed.

MEMBER(A)

MEMBER(J)

mc

