

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

M.A. No. 162 of 2016

With

M.A. No. 163/2016

(Arising out of O.A. No. 92/2013)

WEDNESDAY, THE 16<sup>th</sup> MAY, 2018.

**CORAM :HON'BLE DR.(MRS.) JUSTICE INDIRA SHAH, MEMBER (J)**

**HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (A)**

Krishnendu Patra son of Shibdas Patra  
Dismissed 15420594F Rank : Sep/AA,  
Indian Armed Forces Army,  
(Now dismissed from military service)  
Last posted at Lucknow Unit under Code  
No. 226002, permanent address  
Village Dharampur, TO: Bankura, P.O. and  
P.S. Indpur, The-Khatra, District : Bankura,  
West Bengal PIN no. 722136.

..... Applicant

By Adv. Ms. Dipti Bhattacharyya

**Versus**

1. Union of India, Service through the  
Secretary, Ministry of Defense,  
NO 1 (194)2009/D (Pen & Appeal) Sena  
Bhawan, DHQ PO, New Delhi-110011
2. The Director General of Armed  
Forces Medical Services, Officer of the  
DGAFMS/MA, I, Block Ministry of  
Defense New Delhi-110001
3. Additional Director General Personal  
Services, Adjutant General Branch,  
Integrated HQ of Ministry of Defense  
(Army), AHQ/P.O. – New Delhi-110011
4. Colonel Offg coy cdr of Command  
Hospital Central Command PIN 900450
5. The Brig, Brig IC Adm & b Cdr Tps of  
Command Hospital Central Command  
PIN-900450
6. O/C Records (AMC)  
Central Command Hospital (CC)  
Lucknow-226002

By Adv. Mr. Satyendra Agarwal.

### ORDER

Justice Indira Shah, Member (J)

1. Heard Ms. Dipti Bhattacharyya, learned counsel for the applicant and Mr. Satyendra Agarwal, learned counsel for the respondents.
2. These Miscellaneous Applications have been filed by the applicant for restoration of his Original Application no. 92 of 2013 which was dismissed for default vide order dated 11.6.2015 and also for condonation of delay of 419 days in filing the application for restoration.
3. In the application for condonation of delay it has been mentioned that the father of the Advocate-on-Record died on 9.6.2015 at Bankura. The Advocate went to his residential place and was unable to intimate the fact to the applicant. Subsequent to demise of the father, applicant's Advocate had been suffering from Hepatitis for six months. The learned Advocate could join the Court in the month of January, 2016. On 5.2.2016 when the learned counsel came to the office of this Tribunal he could know about the dismissal of the Original Application. Immediately he applied for certified copy of the impugned order dated 11.6.2015.
4. Rule 16 of the Armed Forces Tribunal Act, 2007 may be quoted here-in-below which speaks about the procedure for dismissal of an application for default and its restoration :

*"(1) Where on the date fixed for hearing of the application or on any other date to which such hearing may be adjourned, the applicant does not appear when the application is called for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merits.*

*(2) Where an application has been dismissed for default and the applicant files an application within thirty days from the date of dismissal and satisfies the Tribunal that there was sufficient cause for his non-appearance when the application was called for hearing, the Tribunal shall make an order setting aside the order dismissing the application and restore the same.*

*Provided that, where the case has been disposed of on merits the same shall not be reopened except by way of review".*

5. Thus sub-clause 2 to Rule 16 says that the restoration application is to be filed within thirty days from the date of dismissal with sufficient cause for non-appearance when the application was called for hearing.
6. As per averment in the application father of the Advocate-on-Record died on 9.6.2015 and subsequent thereto learned Advocate was lying sick till January, 2016. However, he came to the office of this Tribunal on 5.2.2016 and applied for copy of the impugned order of dismissal on 11.6.2015. The application for restoration along with another application for condonation of delay in filing the application was filed on 12.8.2016. There is no explanation, whatsoever, for the delay from 5.2.2016 to 12.8.2016. Moreover, the grounds set forth in the application i.e. death of the father of the Advocate and illness of the Advocate have not been substantiated by any death certificate or medical certificate. Even if the death of the father of counsel and counsel's illness is believed to be true, the application for condonation of delay, as well as the application for restoration of original application, suffers for unexplained delay from 5.2.2016 to 12.8.2016.
7. Mandate of clause (2) of Rule 16 says that the application for setting aside the order of dismissal must be filed within 30 days of the dismissal order with sufficient cause for non-appearance when the application was called for hearing. We may accept that there was sufficient cause for non-appearance on the date fixed for hearing but application beyond 30 days has not been explained properly. The delay from 5.2.2016 to 12.8.2016 has not been explained at all.
8. Therefore, the application for restoration of original application as well as the application for condonation of delay are dismissed.
9. Let a plain copy of this order, duly countersigned by the Tribunal Officer, be supplied to the parties upon compliance of requisite formalities.

(LT GEN GAUTAM MOORTHY)  
MEMBER(ADMINISTRATIVE)

(JUSTICE INDIRA SHAH)  
MEMBER (JUDICIAL)