

(SEE RULE 102 (1))
ARMED FORCES TRIBUNAL, KOLKATA BENCH
M.A. No. 93 of 2016
With
O.A. (Appeal) No. 1/2016

THIS 19th MAY, 2016

CORAM

HON'BLE JUSTICE N. K. AGARWAL, MEMBER (JUDICIAL)

HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

APPLICANT(S)

**Ex Surgeon Commander Bhaskar Roy
(75433 N), classified specialist,
Anesthesiology, Indian Navy, residing
at 162/94-A, Lake Gardens, Kolkata –
700 045.**

Versus

RESPONDENT(S)

- 1. Union of India represented by Defence
Secretary, South Block, Defence
Headquarters, New Delhi-110011**
- 2. Chief of Naval Staff, Naval Headquarters,
New Delhi – 110 001.**
- 3. Directorate of Personal Services,
Vigilance and Discipline, SenaBhavan,
(Ministry of Defence), NAVY, DHQ Post
Office, New Delhi – 110011.**
- 4. Flag Officer Commanding-in-Chief
Headquarters, Western Naval Command,
Naval Dockyard, Mumbai-400001.**
- 5. President, Court Martial, FMO, Mumbai
Naval Dockyard Mumbai-400001.**

For the appellant (s)

Mr. Subhash Chandra Basu, Advocate.

For the respondent(s)

Mr. S. K. Bhattacharyya, Advocate

ORDER

PER HON'BLE JUSTICE N.K. AGARWAL, MEMBER (JUDICIAL)

1. Heard on maintainability of OA and MA.
2. The instant OA has been filed, inter alia, seeking the relief to quash and/set aside the findings on Charges No. 1 and 2 and the sentence of one year R.I. and consequential penalties contained in the order of the Court Martial as upheld by the Chief of the Naval Staff and thereafter with a direction to the respondents to grant all consequential benefits to him.
3. The appellant was charge-sheeted in a General Court Martial and vide the award dated 29.11.1995 he had been sentenced to two years R.I. coupled with dismissal with disgrace. However, the said order was modified by the Chief of Naval Staff vide order dated 29.03. 1996 reducing the sentence of R.I. to one year.

4. Being dissatisfied with the above, the appellant preferred Criminal Writ Petition No. 491 of 1996 before the Hon'ble High Court of Judicature of Bombay. The Hon'ble High Court vide its judgment dated 17.10.1997 allowed the petition in part and modified the order to the extent that the petitioner's dismissal from Naval Service with disgrace was substituted by dismissal from Naval Service and was allowed all consequential benefits arising out of the alteration of this penalty. Sentence and penalty of dismissal from service were however, not effected by this judgment.

5. After an inordinate delay of 1616 days the appellant preferred SLP before the Hon'ble Apex Court along with the application for condonation of delay. The same was dismissed by the Hon'ble Apex Court vide its order dated 23.08.2002. Thereafter, review petition and curative petition filed before the Hon'ble Apex Court by the appellant were also dismissed vide its order dated 28.01.2003 and 17.11.2004 respectively.

6. Now, the appellant has approached this Tribunal by filing an appeal under section 15 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as the Act of 2007). Section 22 of it deals with limitation. Section 22(1) and (2) of the Act of 2007 reads as under :

“(1) The Tribunal shall not admit an application –

- (a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 21 has been made unless the application is made within six months from the date on which such final order has been made;*
- (b) in a case where a petition or a representation such as is mentioned in clause (b) of sub-section (2) of section 21 has been made and the period of six months has expired thereafter without such final order having been made;*
- (c) in a case where the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which jurisdiction, powers and authority of the Tribunal became exercisable under this Act, in respect of the matter to which such order relates and no proceedings for the redressal of such grievance had been commenced before the said date before the High Court.*

(2) Notwithstanding anything contained in sub-section (1), the Tribunal may admit an application after the period of six months referred to in clause (a) or clause (b) of sub-section (1), as the case may be, or prior to the period of three years specified in clause (c), if the Tribunal is satisfied that the applicant had sufficient cause for not making the application within such period.”

7. Section 22(1)(c) of the Act of 2007 empowers the Tribunal to entertain cases in which cause of action arose at any time during the period of three years immediately preceding the date on which jurisdiction, powers and authority of the Tribunal became exercisable. However, the same is restricted to such cases in which no proceedings for such redressal had been commenced before the High Court.

8. The above provision is clear and unambiguous. Therefore, it is clear as crystal that in such matters in which the person aggrieved had already approached the Hon'ble High Court for redressal of his/her grievances then such applications are not maintainable.

9. Reverting to the facts of the case, the appellant has not only approached the High Court but the proceedings filed by the appellant had been decided by the High Court as well as by the Apex Court. Thus, in the instant case lis has come to an end. In view of above, the appeal filed by the appellant on the face is not maintainable in view of specific provisions contained in section 22(1)(c) of the Act of 2007.

10. The learned counsel for the appellant by placing his reliance upon the decisions of the Hon'ble Apex Court in the cases of The Workmen of Cochin Port Trust v. The Board of Trustees of the Cochin Port Trust and another reported in AIR 1978 SC 1283, Amalgamated Coalfields Limited and another v. Janapada Sabha Chhindwara and others reported in AIR 1964 SC 1013 and Ashok Kumar Srivastav v. National Insurance Co. Ltd. and others reported in (1998) 4 SCC 361 would submit that this appeal has been filed on the grounds which could have been taken before the High Court but have not been taken. Further, he would submit as he has challenged the charge-sheet on different grounds, the appeal is not barred by the principle of res judicata. For delay he submits that till 2004 he was prosecuting his remedy before the Apex Court and, thereafter, he approached the Consumer Court in Delhi for imposing penalty against the lawyers for not filing SLP in time. This took four years. The petitioner again approached the Hon'ble Apex Court against the lawyers who directed him to approach before the Hon'ble High Court of Delhi. He approached the Hon'ble High Court of Delhi and launched civil complaints against the lawyers thereby asking for compensation for the default on the part of the lawyers. While he was at Delhi in January 2016, one practicing Advocate in Mumbai told him that his case should be filed in the Armed Forces Tribunal in Kolkata and only thereafter he has filed the instant application and, thus, the delay is not deliberate and is unintentional and deserves to be condoned.

11. As held earlier, in view of the specific provisions contained in section 22(1)(c) of the AFT Act, 2007, the appeal itself is not maintainable and therefore we do not deem it fit to deal with the points raised by the learned counsel for the applicant regarding the maintainability of the appeal. The appellant has also not offered any plausible explanation for the inordinate delay occurred in filing this appeal.

12. Considering every aspect of the matter, the appeal being not maintainable in view of the provisions of section 22(1)(c) of the AFT Act, 2007 the same is liable to be and hereby dismissed.

13. Accordingly, both the MA and OA stand disposed of.

14. Let a plain copy of this order, duly countersigned by the Tribunal Officer, be supplied to the parties after observance of requisite formalities.

(Lt Gen Gautam Moorthy)
Member (Administrative)

(Hon'ble Justice N.K. Agarwal)
Member (Judicial)