

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

M.A. No. 151 of 2016

IN

O.A. (Appeal) No. 02 of 2016

FRIDAY, THE 18TH MAY, 2018

CORAM :

Hon'ble Dr. (Mrs.) Justice Indira Shah, Member (J)

Hon'ble Lt Gen Gautam Moorthy, Member (A)

Ex Dvr Grade II, Dil Bahadur Limbu
Vill. Painakumari Nayabasti
P.O. Simulbari Tea Estate,
District - Darjeeling
PIN - 734009, West Bengal

..... APPELLANT

VERSUS

BY MR. S. K. CHOUDHURY, LD. COUNSEL

1. Union of India, service through the Secretary, Ministry of Defence, New Delhi - 110011.
2. The Chief of Army Staff, through the AGI, HQ of MOD (Army), DHQ PO, South Block, New Delhi.
3. The GOC-IN-C, 33 Corps HQ, 33 Corps, C/o 99 APO.
4. The Commanding Officer 5033 ASC Battalion (MT)
5. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat , Allahabad.

..... RESPONDENTS

BY MR. SATYENDRA AGRAWAL, CENTRAL GOVT. COUNSEL

ORDER

Dr. (Mrs.) Justice Indira Shah, Member (J)

The appellant assailing the final decision dated 25th April, 1995 of the Summary Court Martial (SCM) whereby he was sentenced to suffer rigorous imprisonment for one year and dismissed from

service, had filed an application under Section 164(2) of the Army Act, which was rejected by the Chief of Army Staff, has filed this O.A. along with an M.A. U/s 22(2) of the AFT Act, 2007 praying for condonation of delay of 20 years 8 months and 24 days.

2. Heard learned counsel for both the parties.

3. It is submitted by the learned counsel for the appellant that the appellant had given up all hope of getting any relief. A colleague of the appellant, who was tried and convicted by the SCM for the same incident, had preferred O.A. No. 35 of 2012 before the AFT, Regional Bench Chennai on 13.03.2012 and the Chennai Bench of the Tribunal was pleased to set aside the SCM proceedings and the sentence, after which the appellant in that O.A. had been notionally reinstated and got the relief of service pension.

4. Both the parties have cited several judgements in support of their respective contentions.

5. Normally, an application for condonation of inordinate delay should be rejected, but in this case we are concerned about the question of parity. Moreover, when the alleged SCM decision has been set aside by a legal verdict, how can the sentence passed against the appellant can be kept alive? It, therefore, needs to be adjudicated.

6. In view of the circumstances, we are of the view that refusal to condone the delay may result in grave miscarriage of justice. Therefore, we are inclined to condone the delay.

7. Accordingly delay is condoned. M.A. No. 151/2016 is hereby allowed and disposed of.

(Lt Gen Gautam Moortny)
Member(Administrative)

(Justice Indira Shah)
Member (Judicial)