THE ARMED FORCES TRIBUNAL
REGIONAL BENCH, GUWAHATI

MA-09/2015
(in RA-02/15)

Ex.Sep Subrata Devnath

                          Applicant

By legal practitioners for Applicant

Mr.N.C.Paul

- Versus –

1.Union of India & ors

                     Respondents

                     By legal practitioner for Respondents

Mr.C.Baruah, CGSC

P R E S E N T
HON'BLE MR.JUSTICE N.K.AGARWAL, MEMBER (J)
HON'BLE LT GEN (RETD) GAUTAM MOORTHY, MEMBER (A)

17.11.2015

        Heard Mr. N.C.Paul, learned counsel for the applicant and Ms.D.Tamuli, learned counsel representing Mr. C.Baruah, learned CGSC for the respondents assisted by Major Asha Dahiya, learned JAG Officer.

2]   Learned counsel for the respondents submit that they do not want to file any objection to the application for condonation of delay and are ready to argue the matter.

3]   This application has been filed by the applicant for condonation of delay in filing Review Application for review of the Judgment and order dated 7.6.2012 passed by this Tribunal in TA 21/2011.

4]   Indisputably, the review application has been filed after 3 years of passing of the judgment and order in TA-21/2011 The reasons assigned for condonation of delay are that the applicant did not receive the certified

copy; in the month of May,2015 he applied for certified copy of the order; immediately after it is received the applicant fell ill and ; the delay occurred in filing the review application is neither deliberate nor intentional which deserved to be condoned.

5] Per contra, according to the learned Counsel for the respondents, the applicant has utterly failed to explain the inordinate delay of 3 years; even as per contention of the applicant, the review application has been filed after a period of 30 days which is not maintainable in view of Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008. Virtually, the review application is groundless as the applicant could not demonstrate any error apparent on the face of the records.

6] We have heard the learned Counsel for both the parties and perused the materials available on record.

7] Indisputably, the order under review was passed by this Tribunal on 07.06.2012. The order itself reveals that after due service of notice nobody appeared on behalf of the applicant and therefore, the matter was finally heard in his absence and order was passed. The applicant, thereafter, did not take care of his case for a long period of 3 years which itself suggest that the applicant was grossly negligent in prosecuting his case. It is not mentioned in the application as to how and in what manner he came to know about passing of the impugned order in the month of May, 2015 when he applied for a certified copy of the order.

8] This is not the end of the matter. Even after obtaining a certified copy of the order, the applicant did not file the review application within the time limit. The counsel for the applicant also did not file any document recording his illness during that period. In that way of the matter, it cannot be said that the delay occurred in filing the review application is unintentional or that the applicant was not negligent in prosecuting his case.

9]   Be that as it may, under Rule 18 of the Armed Forces Tribunal (Procedure) Rules 2008, no application for review can be entertained unless it is filed within a period of 30 days from the date of receipt of a certified copy of the order sought to be reviewed.

10]   Therefore, in view of the above provisions also, the review application filed beyond the period of limitation is not maintainable. Moreover, the grounds raised in the review petition are basically the grounds which should have been taken in appeal and are not the grounds for review. In fact, the applicant wants to file the appeal in the garb of the review petition.

11]   Considering every aspects of the matter, in our considered opinion, the condonation application being not maintainable is liable to be dismissed and is accordingly dismissed.

12]   Consequently, the Review Application No.02/1015 is also stands dismissed as barred by limitation.

     MEMBER(A)   **MEMBER(J)**

     Mc