

**FORM NO – 4**

**(SEE RULE 11 (1))**

**IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA**

**ORDER SHEET**

**APPLICATION No : C A 1 of 2013 (OA 70/2012)**

APPLICANT (S)

Ex Capt. Satyendra Kumar

RESPONDENT (S)

Shri S.K.Sharma & 2 Ors

Legal Practitioner of applicant

Legal Practitioner for Respondent (s)

Mr. Rajib Mangalik

Mr. B.K.Das

NOTES OF THE REGISTRY	<b><u>ORDERS OF THE TRIBUNAL</u></b> Order Sl. No. : <u>4/</u> Dated : 01.07.2013
	<p>Mr. Rajib Mangalik, Id. adv. appears for the applicant. Mr. B.K.Das, Id. adv. appears on behalf of the alleged contemnor. However, Mr. Das has not been able to file any vokatnama empowering him to appear on behalf of the alleged contemnors. Mr. Das submits that he has instruction to the effect that within one month, he would file the vokatnama from the alleged contemnors as well as reply affidavit from them. He further submits that such instruction has been received by him through the OIC, Legal Cell, HQ, Bengal Area. However, no written instruction from the alleged contemnors to the OIC, Legal Cell, HQ, Bengal Area could be produced although Lt. Col. Anil Chandra, OIC, Legal Cell, HQ, Bengal Area is present in court personally.</p> <p>We find from the records of the contempt petition No. 1 of 2013 arising out of OA 70 of 2012 that the copy of the order dt. 28.6.12 passed by this Tribunal in the aforesaid OA was duly communicated to the alleged contemnors. However, it appears that no action has been taken to implement this order of the Tribunal. Moreover, not only the implementation is pending but</p>

the authorities have also not taken any step to prefer an appeal or obtain a stay from the Hon'ble Apex Court in respect of the above order. We consider it as a willful violation of the court's order for which till date no explanation has been offered by the alleged contemnors despite the copy of the contempt application having been duly served upon them as is evident from the affidavit of service filed by Mr. Mangalik, Id. adv. for the applicant. Mr. B.K.Das also confirms orally that the copy of the contempt petition has been received by the alleged contemnors. However, later on he submits that as per records available with OIC, Legal Cell, HQ, Bengal Area there is no confirmation that this contempt petition has been received by the alleged contemnors. It is very surprising that such submissions are being made by the Id. Govt. counsel Mr. B.K.Das; when the alleged contemnors have not received the contempt petition, how instructions have been received by him from the alleged contemnors to pray for time for filing vokatatnama and reply on their behalf.

We are not at all convinced by this submission. This aspect was made very clear when the matter was first taken up on 10.1.13 and later on 30.1.13. At that point of time, this order would have been communicated to the alleged contemnors, who at that point of time, were all in service, through the OIC, Legal Cell, HQ, Bengal Area and the Id. counsel who had been appearing on their behalf. Therefore, it is not at all convincing that the alleged contemnors have not received the copy of the contempt petition.

Be that as it may, the applicant's case is that as per our order dt. 28.6.12 passed in OA 70 2012, he was to receive the service element of his pension which has still not been paid without any convincing reply. Therefore, continuous agony and harassment are being suffered by the applicant besides the cost of litigation

as was pointed out to us by his Id counsel are aspects, which cannot be ignored. The respondents or the alleged contemnors have given no assurance to compensate this agony of the applicant on account of delay in implementation of the order.

We make it very clear that in case the alleged contemnors take no steps either to appear in person or by engaging a counsel on their behalf and reply to the ibid contempt petition satisfactorily by the next date, we will be constrained to issue contempt notice for criminal contempt under sec. 19 of the AFT Act.

Ld. Registrar of this Bench is directed to send a copy of this order along with copy of the contempt petition to the Union of India through the Defence secretary for onward submission to all the alleged contemnors. Mr. Mangalik undertakes to supply copies of the contempt petition and the new address of the alleged contemnors within a week.

Let the matter be adjourned to 23.8.13 for hearing. Mr. B.K.Das, undertakes to file vokalatnama on behalf of the alleged contemnor in the meantime.

Let a plain copy of this order duly countersigned by the Tribunal Officer be furnished to both sides.

(LT. GEN K.P.D.SAMANTA)  
MEMBER(A)

(JUSTICE RAGHUNATH RAY)  
MEMBER(J)