

FORM NO – 4
{SEE RULE 11 (1)}
IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA
ORDER SHEET

APPLICATION No. T.A. No. 84/2011

APPLICANT (S)	Ran Singh Dudee
RESPONDENT (S)	Union of India & 3 Others
Legal Practitioner for Applicant (s)	Legal practitioner for Respondents
Mr. Rajiv Manglik	Mr. Anup Kumar Biswas (Resp. Nos. 1 to 3)

	<p style="text-align: center;"><u>ORDERS OF THE TRIBUNAL</u></p> <p><u>Order Serial Number:</u> 26 Dated : 23.07.2013</p>
	<p>Mr. Rajiv Manglik, learned counsel appears for the applicant. The applicant is also present in person. Mr. Anup Kumar Biswas, learned counsel appears for respondent Nos. 1, 2 and 3. None appears for respondent No. 4.</p> <p>In accordance with our order dated 10.04.2013, the respondent No. 1 should have disposed of the application of the applicant under section 165 of the Army Act that was filed by the applicant in this matter vide his letter dated 07.07.2007. The contents of our order dated 10.04.2013 were very clear that the Ministry of Defence (MoD), i.e. respondent No. 1 cannot shirk their responsibility to dispose of certain application under Section 165 of the Army Act and cause such long pendency in its disposal implying thereby passing on executive burden upon this Tribunal and thus staying away from their responsibility which is provided within the statute. That being the intention of our order dated 10.04.2013, we take it very seriously that this matter has not been disposed of by the respondent No. 1 till date.</p> <p>Nevertheless, the learned counsel on behalf of the respondents, Mr. Biswas submits that they were prepared in all respects to dispose of the ibid application, but a questionnaire was submitted by the applicant to them on 21.06.2013 (the same has been perused by us as produced by the learned counsel for the respondents) and the same required a detailed examination and a proper response to the applicant who had submitted such a questionnaire. Since the matter relating to this questionnaire is very important for further perception of the respondents, they sought</p>

comments from Army HQ and such other lower formation HQ who had been dealing with this case. Mr. Biswas, on instruction, submits that such comments are still awaited; and without connected inputs from the Army HQ, it would not be appropriate for the respondent No. 1 to dispose of the applicant's application under Section 165 of the Army Act. For this purpose, Mr. Biswas, on instructions, has prayed for two months more time so as to comply with our order dated 10.04.2013. Mr. Biswas further, on instructions, undertakes that whatever be the outcome, the application of the applicant under Section 165 of the Army Act shall be disposed of within two months from this date by the appropriate authorities.

Mr. Manglik, learned counsel appearing for the applicant, vehemently objected to any further adjournment of the matter on the ground that the respondent No. 1 had all relevant documents that were required to dispose of the said Section 165 application and, therefore, now to make an excuse to seek further time, is not acceptable. He further submits that in compliance with our order dated 10.4.2013, he had submitted one document dated 15.04.2013 which was received by MoD on 17.04.2013 which, according to him, should have clarified all issues and doubt, if at all, that linger in the mind of the respondents, so as to enable them to take a decision on the application under Section 165 filed by his client. It is only when he found that on completion of the period of two months, which was given to respondent No. 1 to dispose of the Section 165 application, he, to be doubly sure, submitted a questionnaire which is now produced by the learned counsel for the respondent for perusal of the Court. While he submits that the questionnaire was submitted on 21.06.2013, the respondent authorities should have disposed off the Section 165 application before that i.e. within two months of the AFT Order dated 10.04.2013. Therefore, to lean on the documents which were submitted only to assist the authorities at a belated stage has now become a reason or plea for the respondents to delay their decisions; which amounts to further delay and compounding the agony of his client. He goes on to further submit that the applicant's application is pending since July, 2007 and now on a small plea which actually gives no excuse or reason to cause any further delay, the matter remains unresolved.

Mr. Manglik, therefore, prays that adequate cost be imposed upon the respondents for their delay beyond two months after issuance of this court's direction on 10.04.2013. He further emphasized that he is even prepared to argue this case and pray for an early disposal by this Court without waiting for the decision of the respondent No. 1 regarding disposal of the applicant's Section 165 application.

We have heard the submissions of the learned counsel from both sides. We have also perused the documents and instructions that have been received by the learned counsel for the respondents. We are of the view that the respondents are unnecessarily delaying the matter on a technical ground to the effect that a questionnaire which was filed on 21.06.2013 has to be answered and they would wait for the fact that would contribute to the response of the questionnaire and they would analyse as to whether they would have any relevance to the disposal of the Section 165 application which is in question. Leaning on such a technical ground by the staff who are dealing the issues would further delay the matter compounding the agony of the applicant. This aspect must be brought to the notice of the Defence Secretary who is respondent No. 1 itself in this case. We direct the respondent No. 1 to comply with our order dated 10.04.2013 and no further delay on account of "questionnaire issue" will be accepted by us on the next date. Be that as it may, having gone through the contents of the questionnaire, we are of the view such a questionnaire relates to matter of records and the process of disposal of the *ibid* Section 165 application of the applicant could have been completed without any further delay and should be expedited in terms of our order dated 10.04.2013. From the action taken by the respondent No. 1, we are of the view that they have not taken our order dated 10.04.2013 very seriously, which is not at all appreciated.

As regards the prayer of the learned counsel for the applicant for imposition of cost upon the respondents, we are not inclined to impose any cost upon the respondents at this stage because the respondents have relied upon the feedback on the questionnaire of the applicant to justify their delay. Nevertheless, the benefit of doubt of such inaction on the part of the respondent No. 1 can be given to them since it is the staff working under respondents who have not taken the issue in its proper

perspective. Therefore, imposition of cost in such a circumstance is not justified. In this regard, the respondent No. 1 should be properly apprised of the fact that the staff working on this case should understand the urgency in disposal of this matter and their action should be monitored appropriately with due diligence and urgency and with due reverence to the direction of this court. We, however, make it very clear that in case of any further delay in the matter, we shall be compelled to consider imposing exemplary cost upon the respondents under Section 18 of the Armed Forces Tribunal Act, 2007.

We also direct the respondents to cause production of all relevant case records in original before the next date of hearing.

At this stage, Mr. Manglik submits that an important document i.e. Appendix 'A' of Army Order 24/94 has not been produced by the respondents till date. He is of the view that it is an important document since at the time of hearing of charges, certain remarks were endorsed by the applicant at that point of time which are vital while adjudicating this matter. He is at liberty to file an application to cause production of such document by next date along with other relevant documents. Copy of such application be handed over to Mr. Biswas in the course of the day. We direct the learned counsel for the respondents to take appropriate steps to cause production of such documents as prayed for in the application of the applicant, if any such application is actually served upon him.

Under such circumstances, let the matter be adjourned till 23.10.2013 for hearing. Considering the urgency of the matter, if required, the matter can be posted on the next date also for continuance of hearing since the matter has been unduly delayed. The respondents shall dispose of the Section 165 application within 60 days from this date.

To 23.10.2013 for hearing.

A plain copy of the order, duly countersigned by the Tribunal Officer, be given to both the parties upon observance of all usual formalities.

(Lt Gen K.P.D. Samanta)
Member (Administrative)

(Justice Raghunath Ray)
Member (Judicial)