

FORM NO – 4

(SEE RULE 11 (1))

IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

ORDER SHEET

APPLICATION No : C.A. 9 of 2013 (OA 34 of 2013)

APPLICANT (S)	Lt. Col. Mukul Dev
RESPONDENT (S)	<u>Shri R.K.Mathur</u>
Legal Practitioner of applicant	Legal Practitioner for Respondent (s)
Mr. Rajiv Mangalik	Mr. Sudipto Panda

NOTES OF THE REGISTRY	<u>ORDERS OF THE TRIBUNAL</u>
	<p>Order Sl. No. : <u>2</u> Dated : <u>12.09.2013</u></p> <p>Mr. Rajiv Mangalik, Id. adv. appears on behalf of the applicant. The applicant is also present in person. Mr. Sudipto Panda, Id. adv. appears on behalf of the alleged contemnor and files his vokatnama duly signed by Mr. R.K.Mathur, alleged contemnor. Let it be kept with the record.</p> <p>Mr. Praveen Kumar, Director, AG I, Ministry of Defence is present on behalf of the Defence Secretary, Govt. of India and has affirmed the affidavit in opposition in response to the contempt petition. The same has been filed by Mr. Panda. Let it be kept with the record. Copy of the A/O has also been served upon the other side.</p> <p>At the outset, Mr. Praveen Kumar, Director, AG, MoD has very honestly submitted that there has been no intention on the part of the alleged contemnor to defy the Tribunal's order dt. 15.5.13 passed in OA 34 of 2013. He further submits that the ibid order was received in the MoD on 28.5.13. Immediately on receipt of the same, MoD on 30.5.13 asked the Army HQ to submit a copy of the concerned OA (i.e. OA 34 of 2013) since</p>

that was to be considered as a statutory complaint in accordance with the order dt. 15.5.13. Copy of the OA was received by the Ministry only on 3.6.13. However, various documents involved and comments from the concerned branch of the Army HQ were not found attached with it nor have they been submitted to the MoD till date. We also observe that while the MoD did not receive any comments from the Army HQ, within a reasonable period of time, no reminder to that effect was also issued by them to the Army HQ for expediting the matter. It is only upon receipt of the copy of the instant contempt application and the order of this Tribunal dt. 19.8.13 thereon, that the Army HQ was reminded to forward the necessary documents so that the matter could be expedited at the earliest.

Mr. Panda and Mr. Praveen Kumar, both pray for another three months time to comply with the order dt. 15.5.13 passed in OA 34 of 2013. Mr. Praveen Kumar further adds that after receipt of all necessary documents and comments from the Army HQ., MoD will not take more than a month to dispose of the matter by treating the OA as a statutory complaint, as has been directed by the Tribunal.

Mr. Mangalik, Id. adv. for the applicant has rebutted the submissions made by Mr. Panda and submits that the MoD has taken nearly four months and has not yet disposed of the original application No. 34/2013 by way of treating it as a statutory complaint of the applicant. He draws our attention to the last para of our order dt. 15.5.13 passed in OA 34/2013 which reads as follows :-

“ Under the circumstances, we feel it appropriate to direct the Union of India, i.e. respondent No. 1 to treat this OA as a statutory complaint and dispose it of on merit as early as possible but not later than three months from this date positively. In case the authorities fail to dispose of this

application after taking it as a statutory complaint by the due date, the matter will be taken up in this Tribunal in case, Mr. Mangalik or the applicant is so advised. With such directions, the application is disposed of."

Mr. Mangalik is of the opinion that in view of the observation made therein, the Tribunal is empowered to revive the said OA (OA 34 of 2013) suo motu and decide it on merit since the MoD has failed to comply with the direction to dispose of the said OA treating it as a statutory complaint of the applicant within 90 days time limit.

Mr. Panda, however, submits that it would not be legally permissible to revive the OA which has already been disposed of with certain direction vide order dt. 15.5.13. Therefore, he raises serious objection to the submission of the Id. adv. for the applicant that this OA can be revived, purely on legal ground. Mr. Mangalik, however, does not agree with this view of Mr. Panda and submits that the intention of the Tribunal was very clear while passing the ibid order dt. 15.5.13 that since the provision of Sec. 21 of the AFT Act was not exhausted by the applicant, the OA may be treated as a statutory complaint by the respondents and dispose of it accordingly failing which, according to his view, the OA 34 of 2013 could be revived.

We have heard the submissions made by both sides. We appreciate the submission made by Mr. Praveen Kumar, who has come all the way from New Delhi to represent the alleged contemnor, for his honest and frank submission in a forthright manner. However, we are not inclined to grant any further time to the respondents/alleged contemnor to dispose of the OA as a statutory complaint, which has already been unduly delayed. We are inclined to believe that the authorities in the Army HQ have

shown no urgency in providing the necessary documents to the MoD to dispose of the OA. We also note that the MoD, even after they became aware of the contents of the ibid statutory complaint (OA 34/2013), did not take any measure to remind the Army HQ to expedite the matter. On the whole, we observe that neither the MoD nor the concerned functionaries in the Army HQ took any urgent step to expedite compliance of the order of the Tribunal by providing necessary inputs to the MoD for disposing of the statutory complaint within the time frame fixed. Such attitude is not appreciated at all.

We make it very clear that the issue raised in the ibid OA, which is to be treated as a statutory complaint, is that 'was the disciplinary entry made in the applicant's dossier legitimate or not'? The concerned authority is to apply its mind to consider whether such an entry indeed exists in the applicant's dossier, if so, was it backed by legitimate Part II Order, since in the Army Part II order supports all such entries in an officer's dossier. This can be verified in a very simplistic manner from the applicant's records maintained by Director, MP 5 and 6 of AG's Branch of Army HQ. We do not understand as to why the MoD or the Army HQ took so long to get the original dossier from the Army HQ and obtain supporting documents viz. Part II order to satisfy themselves whether this entry was legitimate or not.

Therefore, we are of the view that MoD could dispose of the matter and submit a compliance report to this Tribunal within three weeks to the effect whether such disciplinary entry with regard to the applicant indeed exists in his dossier, and if so, is it supported by appropriate authority like Part II order.

For this purpose, three weeks' time is given to the MoD/alleged contemnor to furnish his compliance report before

this Tribunal. Although we have granted three weeks time to file compliance order, it will be appreciated if the MoD is able to submit the ibid report before 1.10.13,

As regards the restoration/revival of OA 34 of 2013, as prayed for by Mr. Mangalik, we only observe that we agree with the submission of Mr. Mangalik that the respondents have failed to comply with our order dt. 15.5.13 even after lapse of four months' time although only 90 days time was granted. We also agree to the point that the respondents have not given any satisfactory reply to explain such long delay. Lack of sincerity and efforts on the part of the respondents have already been noted above. However, we are in agreement with the view expressed by Mr. Panda that a disposed of matter cannot be revived by this Tribunal and, therefore, question of restoration of the ibid OA does not arise.

However, the applicant is at liberty to file a fresh OA, if so advised, within a week after expiry of three weeks time granted for disposal of the ibid statutory complaint (OA 34/2013) in terms of our above order. We make it very clear that granting of such liberty will not stand in the way of the disposal of the ibid statutory complaint by the alleged contemnor within the extended time now granted.

Let the matter be adjourned to 25.10.13 for hearing. It is directed that whenever the statutory complaint (OA 34/2013) is disposed of, a copy of the order, be served upon the applicant without waiting for the next date of hearing so fixed.

Let a plain copy of this order duly countersigned by the Tribunal Officer be furnished to both parties on observance of due formalities.

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

(JUSTICE RAGHUNATH RAY)
MEMBER(J)