

COURT NO. 1
ARMED FORCES TRIBUNAL
mPRINCIPAL BENCH, NEW DELHI

1.

OA 2806/2024

Ex Gunner (L /NK) Yamanappa Kamari
Through His wife Vijayalaxmi Kuri Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Anand Kumar and
Mr. Akshit Anand, Advocate
For Respondents : Mr. Waize Ali Noor, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER
21.08.2024

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, applicant has filed this application and the prayer made in para 8 reads as under:

- I. Direct Respondent No. 1 to dispose of the petition dated 22.12.2023 [Annexure-A/1] within a period of time and/or*
- II. Pass any other order or further orders, instruction/s, direction/s as this Hon'ble Court may deem just and appropriate in the facts and circumstances of the case.*

2. The applicant was subjected to trial in a GCM and has been convicted with punishment for life imprisonment and dismissed from service. The applicant has been confined to Civil Jail (Central Jail) Tezpur, Assam and this application has been filed by the authorized representative parokar namely his wife who

contended that she has filed this application on the authority from her husband who is undergoing the sentence in the Central Jail at Tezpur, Assam. The only grievance of the applicant is that petition filed before respondent no. 1 vide Annexure A-1 on 22.12.2023 has not been decided even after a period of more than six months have elapsed. When the matter was taken up by us on 07.08.2024 an objection was raised by learned counsel for the respondents to the effect that the petition (Annexure-A/1) has been filed under the provisions of Section 165 of the Army Act and taking us through the provisions of Section 165, it was argued that such a petition is not maintainable. We had granted time to learned counsel for the applicant to argue on this aspect.

3. Today, learned counsel for the applicant invites our attention to the Army Act, Chapter XII and Section 164 of the same. It was his submission that once the sentence awarded after trial by the GCM is confirmed then the remedy against such an order of confirmation or punishment is provided under Section 164 and placing reliance on sub section 2 of Section 164, it was argued that the applicant on behalf of her husband, who is the aggrieved person has invoked the jurisdiction of the Competent Authority under sub section (2) of Section 164 and therefore, treating the petition

(Annexure-A/1) to be one under Section 164(2) to the Competent Authority, respondent no. 1 be directed to dispose it of in accordance with law.

4. Having heard learned counsel for the parties we are of the considered view that merely because a wrong section has been mentioned in the petition (Annexure A-1) it is not appropriate to dismiss this petition and relegate the applicant again to seek redressal afresh.

5. A bare reading of Section 164 (2) clearly shows that after confirmation, the remedy available to the aggrieved person is to invoke the jurisdiction of the stipulated authority and challenge or seek interference into the punishment imposed which has been confirmed by the Competent Authority. Even if the Chief of the Army staff to whom the petition is addressed is not competent enough to decide the matter, he has the authority to remit it to the competent authority for a decision.

5. In view of the above without expressing any opinion on the merits of the matter and finding that interest of justice requires that petition filed by the applicant on behalf of her husband vide (Annexure-A/1) in December, 2023 needs early redressal, we dispose of this matter with the following direction:

(a) On the applicant's filing a copy of this order before respondent no 1, respondent no. 1 shall examine the petition (Annexure-A/1) as one presented under Section 164 (2) of the Army Act and in case he is competent enough to decide it he shall decide it in accordance with law within a period of three months. However, if for any reason whatsoever he feels that it has to be decided by some other authority he is directed to forward it to the said authority, within a week and the said authority thereafter dispose of the petition within three months of its receipt by him.

6. With the aforesaid for the present we dispose of the matter, needless to emphasize that in case the applicant is still aggrieved by the decision taken on the petition he shall have the liberty to assail it in accordance with law.

7. It may however be noted that the order has been passed in the peculiar facts and circumstances of this case and shall not be treated as a precedent. Accordingly, we dispose of the matter.

8. Let a copy of this order be given *'Dasti'*.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN C.P. MOHANTY]
MEMBER (A)

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