

(3)

O.A.No.25/09

Ex-L/Nk Durgesh Kumar Sharma

...Applicant

Versus

The Union of India & Ors.

...Respondents

CORAM :

**HON'BLE SH. S.S.KULSHRESTHA, MEMBER
HON'BLE SH. S.S.DHILLON, MEMBER**

ORDER

Dated : 09.10.2009

Present : Sh. C.M.Khanna, Advocate for the applicant.

Col R. Balasubramaniam, Advocate for the respondents.

This application has been filed for quashing the order dated 01.04.2009 passed by Additional Directorate General, Discipline & Vigilance (DV-3), Adjutant Generals Branch, Integrated Headquarters of Ministry of Defence (Army), New Delhi whereby rejecting the Memorandum filed by the applicant Ex/Nk Durgesh Kumar Sharma u/s.165 of the Army Act against the decision dated 23.10.2008 passed by Chief of Army Staff on the earlier petition dated 31.12.2007 submitted by him u/s.164 of the Army Act. It is said that the respondents escaped to have the notice of Statutory provisions as contained u/s.165 of the Army

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Act while rejecting the petition simply observing it to be not maintainable.

In this regard it shall be useful to refer Section 165 of the Army Act which reads as under:

“Annulment of proceeding – The Central Government, (the Chief of the Army Staff) or any prescribed officer may annul the proceedings of any court-martial on the ground that they are illegal or unjust.”

From the above provisions it is clear that there are concurrent powers on the Central Government/Chief of Army Staff or any prescribed officer. Here the powers were not exercised by the Chief of the Army staff in exercise of the powers u/s.165 and so the Central Govt./prescribed officer was under obligation to decide the representation.

If we look into both Sections 164 and 165 of the Army Act, the powers flowing from Section 165 is altogether different then whatever contained in Section 164 of the Act. Here admittedly the Chief of the Army Staff passed orders on the representation made under Section 164.

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Rights vested with the Central Government u/s.165 can not stand obliterated without cogent reasons and not on mere frivolity.

In the given circumstances, the impugned order dated 01.04.2009 is set aside. Central Government/appropriate authority is directed to decide the representation afresh in exercise of the powers u/s.165 of the Army Act. Applicant is at liberty to make fresh representation to the authority concerned along with the order of this ~~court.~~ ^{Tribunal} Application is disposed off accordingly.

S.S.DHILLON
(Member)

S.S.KULSHRESHTA
(Member)

OCTOBER 09, 2009