

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI**

**O.A NO. 7 OF 2010**

14552580N EX NAIK/TCM (LINE) PRABHU DAYAL SHARMA  
S/O. SHRI LALPATI RAM,  
RESIDENT OF GHASKATA, P/O TANTPUR,  
TAHSIL: KHERAGARH, DISTT: AGRA  
UTTAR PRADESH-283115.

THROUGH: MR. S.S PANDEY, ADVOCATE

**.. APPLICANT**

VS.

1. UNION OF INDIA THROUGH THE SECRETARY  
MINISTRY OF DEFENCE, SOUTH BLOCK  
DHQ P.O., NEW DELHI – 110 011.
2. CHIEF OF THE ARMY STAFF  
INTEGRATED HQ OF MINISTRY OF DEFENCE (ARMY)  
DHQ PO, NEW DELHI – 110 011.
3. OFFICER IN CHARGE,  
5 FOD, C/O 99 APO.

THROUGH: MR. ANKUR CHIBBER, ADVOCATE WITH LT. COL.  
NAVEEN SHARMA

**.. RESPONDENTS**

## **CORAM**

**HON'BLE MR. JUSTICE S.S KULSHRESHTHA, MEMBER**  
**HON'BLE LT. GEN. S.S DHILLON, MEMBER**

## **JUDGMENT**

**05.03.2010**

1. Ex. Nk. Prabhu Dayal Sharma, the applicant herein, seeks to quash the order dated 3.2.1997, whereby he was found guilty for the offence under Section 354 of the Indian Penal Code (the Code, in short) by Summary Court Martial held at Siliguri, and also the subsequent order dated 19.12.1997 passed by the Chief of Army Staff, rejecting his representation under Section 164(2) of the Army Act (the Act, for brevity).

2. At the outset, with regard to the delay of about 13 years in filing the application, counsel for the petitioner submitted that the applicant was not communicated about the rejection of his representation under Section 164(2) of the Act. Further, the applicant was not informed about the rejection of that representation even by his lawyer who had sent the representation to the Chief of Army Staff under Army Act Section 164(2) while the applicant was in jail. Therefore, he continued to send reminders for the disposal of the representation

and he had even approached the Allahabad High Court for getting it disposed of. It is stated that the applicant came to know about the rejection of his representation only when counter affidavit was filed in the writ petition (W.P (C) No. 5911 of 1998) before the Allahabad High Court stating that the representation under Section 164(2) of the Act was rejected on 16.12.1997. The said writ petition was disposed of on 24.7.2009. From that date, virtually the cause of action was assigned. It is stated that the petition is not bad for laches. The applicant bonafidely pursued the case before the Allahabad High Court.

2. To the contrary, it is contended on behalf of the respondents that the applicant had chosen to approach different forums for the same cause of action. He had filed W.P (C) No.23228 of 1997 before the Calcutta High Court and the same was dismissed for default on 7.10.1997. The restoration application was also rejected, but liberty was granted to file fresh application for the same cause of action before the appropriate Court.

3. It is stated by counsel for the applicant that the applicant had approached the Calcutta High Court since the Summary Court Martial proceedings were held at Siliguri, within the jurisdiction of the Calcutta High Court. But subsequently, another writ petition was filed before the Allahabad

High Court. In the counter affidavit filed in the said writ petition, it was stated that the representation filed by the applicant under Section 164(2) was dismissed on 16.12.1997. On the basis of that statement, the writ petition ought to have become infructuous. Even thereafter, the petitioner proceeded with the writ petition filed before the Allahabad High Court. For such lapses on his part, the applicant cannot take the benefit of the inordinate delay. Further, the applicant had concealed material facts by not disclosing about the filing of the earlier writ petition before the Calcutta High Court while resorting to the writ jurisdiction of the Allahabad High Court. Therefore, the applicant cannot now take advantage of the order which was subsequently passed by the Allahabad High Court on 13.4.2009. It is also stated that since the representation was filed through his lawyer, information regarding the disposal of the representation was given to the lawyer from the office of the Chief of Army Staff.

5. It is strenuously argued by counsel for the applicant that the applicant had bonafidely pursued the case before the Allahabad High Court and only after the disposal of that writ petition, he filed the representation. It is further stated that the Allahabad High Court had no jurisdiction since the cause of action arose at Siliguri, within the jurisdiction of the Calcutta High Court. But, for the convenience of the applicant, the second petition was filed before the

Allahabad High Court. Convenience would not confer jurisdiction. However, it is to be noted that the applicant had concealed the material fact from the Allahabad High Court that he had filed a writ petition before the Calcutta High Court. The fact remains that in the writ petition which was filed before the Allahabad High Court, the respondents took the stand by filing counter affidavit that the representation under section 164(2) of the Act was rejected on 16.12.1997 itself. From the records, it is clear that the applicant had filed the representation through his counsel and that the information regarding the disposal of the representation was given to the counsel for the applicant. But there is nothing on record to show that he had changed his lawyer. When there was statement in the counter affidavit filed before the Allahabad High Court regarding the rejection of his representation, there was no reason for the applicant to have waited for 13 years. The applicant cannot be given any benefit when he allowed more than 13 years to elapse. Courts cannot come to rescue of persons who are not vigilant of their rights. There was deliberate laches on the part of the applicant and for that no valid explanation could be given. This application is liable to be dismissed on account of inordinate delay and wilful negligence/laches on the part of the petitioner. Reliance may be placed on the decision of the apex Court reported in **Nadia District Primary School Council and**

**another v. Sristidhar Biswas and others** (AIR 2007 SC 2640). The application is dismissed.

(S.S DHILLON)  
MEMBER

(S.S KULSHRESHTHA)  
MEMBER