

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI

O.A NO. 188 OF 2010

EX. LT. COL. MANOJ KUMAR  
553-G/10 SAMARPAN, TAPESHWAR ROAD  
P.O GARHI CANTT, DEHRADUN  
UTTARAKHAND-248 003.

THROUGH : MR. P.D.P DEO, ADVOCATE

...PETITIONER

VERSUS

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 P.O., NEW DELHI-110 011.

THROUGH : LT COL NAVEEN SHARMA

...RESPONDENTS

CORAM :

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

JUDGMENT

29TH MARCH 2010

1. This application under Sections 14 and 15 of the Armed Forces Tribunal Act 2007 is filed for issuing appropriate directions to the respondents to decide the post confirmation petition dated 30.3.2009 filed by the applicant under Section 164(2) of the Army Act. It is stated that three reminders were sent to the respondents on 13.7.2009, 16.9.2009 and 22.2.2010. Still no decision has been taken by the respondents on the post confirmation petition.

2. A brief resume of the facts may be made. The applicant was tried by the General Court Martial from 12.11.2007 to 11.2.2008 on certain charges. He was held guilty and sentenced to (a) forfeit two years service for the purpose of promotion; (b) forfeit four years past service for the purpose of pension; and (c) be severely reprimanded. The convening authority, having not been satisfied with the finding and the sentence awarded by the GCM, remanded the case for reconsideration and ordered revision of sentence. Finally, the GCM took a stringent view and awarded the punishment of dismissal from service. Being aggrieved, the applicant preferred a post-confirmation petition on 30.3.2009, which has not yet been disposed of.

3. It may be mentioned that the applicant, who is aggrieved by the sentence awarded, has the 'legitimate expectation' that his post-confirmation petition would be disposed of expeditiously. The doctrine 'legitimate expectation' imposes a sense of duty on the authority to act within a reasonable time. The authority ought not to have defeated the 'legitimate expectation' without justification to do so by way of withholding its disposal.

4. Section 164(2) of the Army Act provides that any person who is aggrieved by a finding or sentence of any court martial, may present a petition to the Central Government and in that situation, the expression used in Section 164(2) shall be construed to mean that it is mandatory on the part of the authority to dispose of the said representation. No discretion is given to the authority to withhold it for such a long period. The doctrine of 'full faith' may also be applied in the given situation where the authorities are required to act or perform the duties in accordance with the procedure prescribed in faithful discharge of the act done or performed.

5. The application is, therefore, allowed directing the respondents to dispose of the post-confirmation petition dated 30.3.2009 filed by the applicant under Section 164(2) of the Army Act within three weeks.

(S.S DHILLON)  
MEMBER

(S.S KULSHRESTHA)  
MEMBER