

#11

**COURT NO. 2, ARMED FORCES TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**T.A. No.493 of 2010**

**W.P.(C) No.10397 of 2009 of Delhi High Court**

**IN THE MATTER OF :**

**Lt. Col. Ebinesa Kumar**

**.....Applicant**

**VERSUS**

**Union of India & Others**

**.....Respondents**

**Dated: 20.12.2011**

**Present:     None on behalf of applicant.**

**Mr. Ankur Chibber, counsel for the respondents.**

**Heard and perused the record.**

None has appeared for the applicant despite list revised. On previous date also none appeared on behalf of applicant. Learned counsel for the respondents states that the applicant was dismissed under Section 19 read with Army Rule 14 along with Regulation 423 of the DSR on the ground that he was held convicted and sentenced by the Criminal Court by the order dated 31.12.2007. He further states that though against that order the applicant has preferred an appeal before the Hon'ble High Court of Madhya Pradesh at Jabalpur and his sentence has been suspended, but conviction has been maintained. Thus, under Regulation 423 of the DSR, the respondents authority are free to proceed to dismiss him from services. He further submits that, at this juncture, they are required to make a probe or to issue show cause notice and also required to wait the final outcome of the appeal. He

also drew our attention towards Regulation 423 of the DSR. Regulation 423 of the DSR is reproduced hereunder for ready reference:

**"423. Conviction of Officers, JCOs, WOs and OR by the Civil Power** – The conviction of an officer by the civil power will be reported to the Central Government and that of a JCO to the Chief of the Army Staff for such action as these authorities see fit to take. The conviction of a WO or OR will be reported to the brigade/sub-area commander who will decide whether dismissal, discharge or reduction is desirable.

The disciplinary authority may, if it comes to the conclusion that an order with a view to imposing a penalty on a Government servant on the ground of conduct which had led to his conviction on a criminal charge should be issued, issue such an order without waiting for the period of filing an appeal or, if an appeal has been filed without waiting for the decision in the first court of appeal."

A request is made that no purpose will be served in keeping this case pending, it may be dismissed.

Considering the submission of learned counsel for the respondents, without commenting and observing anything on merit of the case, since none has appeared for the applicant on previous date as well as today, we have no option, but to dismiss the T.A. Accordingly, the same is dismissed in default. No orders as to costs.

**M.L. NAIDU**  
(Administrative Member)

**MANAK MOHTA**  
(Judicial Member)

Dated: 20.12.2011  
rsk