

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

S-01.

O.A.No. 26 of 2011

Ex. Capt. P.T. Peethamber

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: None.

For respondents:

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.  
HON'BLE LT. GEN. M.L. NAIDU, MEMBER.

ORDER  
20.01.2011

This case was listed yesterday also.

None has appeared.

The application is dismissed for want of prosecution.

A.K. MATHUR  
(Chairperson)

M.L. NAIDU  
(Member)

New Delhi  
January 20, 2011

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

OA No.26 of 2011

Ex. Capt. P.T. Peethamber ...Petitioners

Versus

Union of India & others ...Respondents

For the Petitioner : Dr. Shyamliha Pappu, Sr. Advocate  
with Mr.R.Krishnaamorthy, Advocate

For the Respondents: Mr. Ankur Chhibber, Advocate

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON  
HON'BLE LT.GEN.S.S.DHILLON, ADMINISTRATIVE MEMBER

**JUDGMENT**  
**05.12.2012**

**By Chairperson**

1. Petitioner by this petition has prayed to quash the order dated-  
16.6.2009 passed by the Dy.Director PS-4 (legal), Addl.  
Directorate General of Pers Services, Adjutant General's branch,  
Army HQs, New Delhi and to direct the respondent to alter the  
punishment of the applicant from cashiering to that of compulsory  
retirement and he be given all terminal benefits.

2. Petitioner joined the Indian Army as a Junior Commissioned Officer in 1970 and in 1986, he was promoted to the rank of Captain. Petitioner was court-martialled and punished by cashiering and R.I. of one year by the order dated- 10.12.1998. The petitioner filed a writ petition No.187/98 in the Hon'ble Guwahati High Court against the Order of the General Court Martial for the aforesaid punishment. The Hon'ble Guwahati High Court remitted the matter back to the confirming authority to reconsider the sentence in the light of submissions and observations made in the Order dated-10.12.1998. Then he filed an appeal before the Division Bench against the order passed by the Single Bench and confirmed by the Hon'ble Guwahati High Court vide its Order dated 14.09.1999. The confirming authority in view of the direction given by the Hon'ble Guwahati High Court, considered the matter of sentence again and thereafter on 23.09.1999 General Officer Commanding in Chief, Eastern Command passed the order confirming the sentence of cashiering, however, he remitted the sentence of imprisonment.
3. Thereafter, the applicant filed SLP before the Hon'ble Supreme Court which came up for hearing on 21.01.2000 and the Hon'ble Court was pleased to permit the applicant to withdraw the SLP with

liberty to approach the Army authorities for substituting the punishment of cashiering to that of compulsory retirement. After the withdrawal of SLP from the Supreme Court, the applicant represented to the Chief of the Army Staff for substituting the punishment of cashiering to that of compulsory retirement. But the same was rejected by the respondent by the non-speaking order dated 19.04.2001. Then applicant filed a Writ Petition in the Hon'ble Delhi High Court which passed an order on 18.05. 2001 to dispose off the representation of the petitioner dated-1.07.2000, however, prior to this the representation of the petitioner had already been disposed of. This fact was not brought to the notice of the Hon'ble Delhi High Court and Hon'ble Delhi High Court passed the order directing the disposal of the representation of petitioner. After the directions, the petitioner received a disposal of the representation passed by the respondent on 19.04.2001. Then again a Writ Petition No.6848/2001 was filed by the petitioner in the Hon'ble Delhi High Court challenging the order dated-23.3.1999 and 19.04.2001 rejecting the representation of the applicant dated 1.07.2000 praying for substituting the punishment of cashiering to one of compulsory retirement. The Writ Petition No.6848 of 2001 was disposed of by the Hon'ble Delhi High Court,

directing the respondents to dispose of representation dated 01.07.2000 for substituting the punishment of Cashiering to one of compulsory retirement, keeping in view observations made by the Hon'ble Guwahati High Court in its judgement and Order dated-10.12.1998 and their own observations dated-08.07.2008. Thereafter, respondent disposed of the representation without substituting cashiering for compulsory retirement. Thereafter, the petitioner filed a SLP bearing No.29873 of 2010 against the order dated-16.06.2009 passed by Dy. Director (PS-4) Legal, Addl. DG of Personal Services, AG branch, Army HQ rejecting the request of the petitioner for converting the cashiering into compulsory retirement. This petition was not entertained by the Hon'ble Supreme Court on the ground that the order of the Army Headquarters cannot be challenged directly in the Supreme Court and the same was permitted to be withdrawn by the order dated-19.4.2010 by the Hon'ble Supreme Court. Hence the petitioner filed the present petition before this Hon'ble Tribunal challenging the Order dated-16.06.2009 on the ground that request of the petitioner has not been acceded and the order passed by the authorities is not a speaking order and it is also prayed that the punishment is too harsh. It was also pointed out that withholding

of his pension and gratuity is unlawful. It was also pointed out that there is no provision under section 71 of the Army act which prohibits the payment of pension & gratuity.

4. A reply was filed by the respondent and respondent in their reply have contested the matter and submitted that the case of the petitioner was considered in its correct prospective and because of enormity of the offence, the authorities did not feel inclined to interfere with the punishment.

5. We heard learned counsel for the parties and perused the record.

So far as the conduct of the court martial is concerned, same has been confirmed by the Hon'ble Guwahati High Court. The only question for consideration is whether the petitioner's punishment of cashiering should be converted to that of compulsory retirement. It is the discretion of the Government that looking into the nature of the offence committed by the petitioner, whether he should be given cashiering or compulsory retirement. The matter was remitted back to the government, and government after considering the background in which the petitioner was court martialled considered all the aspects and in their order dated- 16.06.2009, observed that the offence committed by him let down the morale and ethos of the disciplined force and they found that

the punishment for the crime is commensurate with the delinquency and does not merit any interference. It was observed that looking into the facts of the case and the gravity of the offence which has diminished the ethos of the discipline force, therefore, rejected the representation of the petitioner for converting punishment of cashiering to that of compulsory retirement.

6. The counsel for the petitioner also invited our attention to section 71 of the Army Act. It is true that section 71 from clause (a) to (j) does not debar the payment of pension or gratuity, but clause (k) clearly says that in case of a person sentenced to cashiering, all arrears of pay and allowances and other public money due to him at the time of such cashiering or dismissal will be forfeited. That shows that as per clause (k) of Section 71 of Army Act, payment of all public money in case of a person who has been cashiered and dismissed can be denied to him. Therefore, the contention of the petitioner that his pension and gratuity cannot be denied to him cannot be sustained. However, the petitioner has been agitating the matter for a very long time and he has gone to Hon'ble Guwahati and Delhi High Courts and twice to the Hon'ble Supreme Court, he may file a mercy petition to the Hon'ble President of India, as the Hon'ble President is vested with the powers to

condone the same and grant him pension and gratuity in the matter of cashiering, should he so desire.

7. However, there is no ground made before us to grant him the relief of reducing the punishment of cashiering to that of the compulsory retirement and to grant him pension and gratuity.
8. Subsequently, there is no merit in the present petition and the same is dismissed. No order as to costs.

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[Justice A.K. Mathur]  
Chairperson

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(Lt. Gen. SS Dhillon]  
Member (A)

New Delhi  
5<sup>th</sup> December, 2012