

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

17.

MA 32/2017 in OA (Appeal) 808/2015

Ex Cdr Shashi Kumar

..... ..Applicant

Vs.

UOI &Ors

.....Respondents

For petitioner : Mr.D.J. Singh Advocate

For Respondents : Mr. V.S.Tomar Advocate.

CORAM:

**HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE AIR MARSHAL J.N.BURMA, MEMBER**

**ORDER
23.01.2017**

1. This is an application seeking review of the order dated 01.11.2016 by virtue of which three months period was given to the respondents to decide the review petition of the applicant under Section 160 of the Navy Act. Learned counsel for the respondents has pointed out that under Section 160 of the Navy Act powers of review are vested with the Judge Advocate General and since the Judge Advocate General was associated with the case at the stage of pre trial recommendations, therefore, in order to obviate any allegation of bias that could be made by the applicant later in point in time, this application was filed as an abundant caution to get the clarification as to whether the review petition is to be decided by the Judge Advocate General or any other official.

2. Reply to the review petition has been filed by the applicant who has also placed reliance on an order dated 24.02.2006 passed by the Apex Court in Civil Appeal No.7358 of 2003 titled as State of UP.. Vs. Sheo Shanker Lal Srivastava & Ors. It is contended by the learned counsel for the applicant that in case the power is conferred on the Judge Advocate General to decide the review application and he has also been associated with the pre-trial proceedings, that shall not preclude him from processing the said review petition as it is his duty. Based on "doctrine of necessity" it is he alone

who can decide the review petition. He has further stated that the respondents were granted three months time to decide the review petition which is likely to expiry on 01.02.2017 and therefore, no further time should be given to them.

3. We have heard the learned counsel for the parties. Perused the averments made in the application under reply. We are of the considered view that "doctrine of necessity" would be applicable in the present case and merely because the Judge Advocate General was associated with the pre-trial proceedings, in the case in question, that does not preclude him from discharge of statutory duties. So far as the time period is concerned, despite objection having been raised by the applicant, we feel that the interest of justice would be served that in case the review application is decided within a period of six weeks from today. With these observations, the application stands disposed off. Order dasti.

(V.K. SHALI)
MEMBER (J)

(J.N.BURMA)
MEMBER(A)