

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.1

O.A. No. 619 of 2021

Brig. Javed Iqbal
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>08.10.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>Memo of Appearance filed by Dr. Shailendra Sharma Atal , Advocate on behalf of the respondents is taken on record.</p> <p>Heard Shri K.C. Ghildiyal and Shri R. Chandra, Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents.</p> <p>Applicant has filed this Original Application seeking quashing of order dated 22.07.2021 issued by respondent No. 3 regarding holding meeting of Selection Board in respect of the Judge Advocate General's Department and also for other reliefs.</p> <p>Ld. Counsel for the respondents submits that Original Application being filed without availing of the remedy of Statutory Complaint, as provided under Section 27 of the Army Act, 1950, should be dismissed under Section 21(1) of the Armed Forces Tribunal, Act, 2007.</p> <p>Section 21 of the Armed Forces Tribunal Act reads as under :-</p> <p><i>"21. Application not to be admitted unless other remedies exhausted. – (1) The Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of the remedies available to him under the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950), as the case may be, and respective rules and regulations made thereunder.</i></p> <p><i>(2) For the purpose of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950), and respective rules and regulations –</i></p> <p><i>(a) if a final order has been made by the Central Government or other authority or officer or other person competent to pass such order under the said Acts, rules and</i></p>

regulations, rejecting any petition preferred or representation made by such person;

(b) where no final order has been made by the Central Government or other authority or officer or other person competent to pass such order with regard to the petition preferred or representation made by such person, if a period of six months from the date on which such petition was preferred or representation was made has expired.”

Ld. Counsel for the respondents further submits that Original Application is bad for non-joinder of Officer next to applicant in Judge Advocate General's Department as his right may be adversely affected if interim relief prayed in Original Application is heard and favourably decided without providing opportunity of hearing to him.

In reply, Ld. Counsel for the applicant submits that applicant has been approved for promotion to the post of Major General in Judge Advocate General's Department on 05.05.2021 by Selection Board but has not been issued order of promotion probably due to being in low medical category (Hypertension). Applicant is due for retirement on 28.02.2022. Respondent No.3 has already issued order dated 22.07.2021 for holding meeting of Selection Board for promotion to the post of Major General in Judge Advocate General Department and Board meeting is scheduled in this October only, and if applicant is asked to avail of the remedy of Statutory Complaint before filing Original Application, the purpose of Original Application will be frustrated. He submits that period prescribed for disposal of Statutory Complaint is six months.

He further submits that in the peculiar circumstances like one in hand the Tribunal has power to admit Original Application for hearing. The opening sentence of Section 21(1) that *“The Tribunal shall not ordinarily admit an application unless it is satisfied”* makes clear that in peculiar circumstances the Tribunal can admit Original Application for hearing to ensure ends of justice even where all remedies available under the respective Act, rules and regulations made thereunder have not been exhausted.

We have read Section 21 of the Armed Forces Tribunal Act, 2007 and we find that normally an application under the Act mentioned above may be filed after exhausting all remedies available to the individual under respective Act, rules and regulations made thereunder. However, there may be odd circumstances also where if individual is asked to exhaust the remedies available the purpose of application may be frustrated. In that situation the Tribunal cannot be treated powerless to entertain the applicant without exhausting the remedies rather it can admit application for hearing.

If we examine the facts of the case, as set in Original Application, we find that applicant is serving on the post of Brigadier in Judge Advocate General's Department since 2014 and is due for retirement on 28.02.2022.

There are two sanctioned posts of Major General in the Department, the Judge Advocate General and the Additional Judge Advocate General (Litigation). The post of Judge Advocate General is occupied and the post of Additional Judge Advocate General (Litigation) is lying vacant since 01.12.2020. The applicant while being in COPE Coding C2 medical category has been approved for promotion for the post of Major General on 05.05.2021 by the Promotion Board. The order for holding the next meeting of Departmental Promotion Board inter alia for JAG Branch has already been issued and meeting is expected to take place in this October. If this DPC is held the prospect of the applicant's promotion may be affected even though he has been already approved for promotion on 05.05.2021. Considering this, if applicant is asked to avail the remedy of Statutory Complaint before filing application then purpose of application may be defeated as in that situation application can be filed only after the expiry of six months from the date Statutory Complaint, and not before. Thus, in given circumstances the Tribunal can admit the application for hearing to meet the ends of justice.

As regards Application being bad for non joinder of the party, we do not find force in submission of learned respondents' Counsel that interest of next junior Officer may be adversely affected if application is heard and decided in his absence. It is not the case that next junior officer has also been empanelled for promotion to the post of Major General in Judge Advocate General's Department and in that case no question of his interest being adversely affected does arise.

Accordingly, Original Application is **admitted** for hearing as it needs adjudication.

At this stage, it is submitted by the Ld. Counsel for the respondents to grant time to seek instructions before hearing the interim relief application which is allowed.

List on **13.10.2021** for hearing on interim relief.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

AKD/-

By Circulation

Form No. 4
{See rule 11(1)}
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

R.A. No.51 of 2021 Inre : O.A. No. 20 of 2016 with Ex. A. No. 63 of 2021

Ex. Sgt. Balkrishna M.

Applicant

Versus

Union of India and Others

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>08.10.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>The file has been placed before us by Circulation.</p> <p>The Review Applicant has filed this application under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 by which applicant has prayed for review and setting aside the order dated 24.09.2021 of this Tribunal passed in Execution Application No.63 of 2021 <i>inter alia</i> on the ground that this Tribunal fell into error by construing that in the order under execution the applicant was compensated and quantified the cost of Rs.2 lacs for wrongful denial of third extension to the applicant, the compensatory cost was in addition to the entitled benefits, compensatory cost cannot curtail the entitled right of wrongfully terminated aggrieved from consequential entitlements and while passing the said order under Review this Tribunal fell into error by misconstruing that "except that nothing was ordered" and had not considered the Hon'ble Apex Court and Hon'ble High Court Rulings contained in Annexure No. 5 and 6 to the Execution Application. Applicant has also stated that this Tribunal has fell into error by not considering Para 3.1 of Notes to Rule 12 of Manual of Air Force Law, Volume II Chapter III contained in Annexure No. 4 to the Execution Application. The operating portion of order under review reads as under:-</p> <p><i>"It is admitted fact that respondent No. 5 has paid Rs.2,00,000/- to the applicant in compliance of above order.</i></p> <p><i>In the order under execution the applicant was compensated and quantified the cost at Rs.2 lacs for wrongful denial of third extension to the applicant. Except that nothing was ordered.</i></p> <p><i>In view of above, we are of the considered opinion that nothing remains for compliance of the order under execution.</i></p> <p><i>In the result, Execution Application deserves to be dismissed being infructuous. Accordingly, Execution Application is dismissed being infructuous."</i></p>

It is a settled proposition of law that the scope of the review is limited and until it is shown that there is error apparent on the face of record in the judgment and order sought to be reviewed, the same cannot be reviewed.

For ready reference, Order 47, Rule 1 sub-rule (1) of the Code of Civil Procedure, 1908 is reproduced below :-

“1. Application for review of judgment.- (1) any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.”

In view of the principles of law laid down by the Hon'ble Supreme Court in various decisions, it is settled that the scope of review jurisdiction is very limited and re-hearing is not permissible. The Hon'ble Supreme Court in Para 9 of its judgment in the case of ***Parsion Devi and others vs. Sumitri Devi and others***, reported in (1997) 8 Supreme Court Cases 715, has observed as under :-

“9. Under Order 47, Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self- evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47, Rule 1 CPC. In exercise of the jurisdiction under Order 47, Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise.”

We have gone through the judgment and order sought to be reviewed and no illegality or irregularity or error apparent on the face of record being found therein, we are of the view that there is no force in the grounds taken in the review application so that order may be reviewed.

In the result, Review Application is **rejected**.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

AKD/-

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.1

O.A. No. 606 of 2021

Ex. JWO Vinod Kumar Singh
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>08.10.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p style="text-align: center;">Memo of Appearance filed by Ms. Amrita Chakraborty, Advocate on behalf of the respondents is taken on record.</p> <p style="text-align: center;">Heard Shri R. Chandra, Ld. Counsel for the applicant and Ms. Amrita Chakraborty, Ld. Counsel for the respondents.</p> <p style="text-align: center;">The matter needs adjudication.</p> <p style="text-align: center;">Admit.</p> <p style="text-align: center;">Ld. Counsel for the respondents seeks and is allowed four weeks time to file Counter Affidavit. Rejoinder Affidavit, if any, may be filed within two weeks thereafter.</p> <p style="text-align: center;">List the matter before Registrar on 29.11.2021 for exchange of pleadings.</p> <p style="text-align: center;">List the matter before Tribunal on 19.01.2022.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) Member (A)</p> <p style="text-align: center;">(Justice Umesh Chandra Srivastava) Member (J)</p> <p>AKD/-</p>

Form No. 4
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ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.1

M.A. No. 654 of 2021 with M.A. No. 655 of 2021 Inre : O.A. No. 40 of 2012

Ex. Ptr. Mahabir Singh
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>08.10.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p style="text-align: center;">Memo of Appearance filed by Dr. Shailendra Sharma Atal, Advocate on behalf of the respondents is taken on record.</p> <p style="text-align: center;">Heard Shri Anuj Saini and Shri Govind Kant Sharma, Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents.</p> <p style="text-align: center;">It is submitted by the Ld. Counsel for the respondents that respondents have not received the copy of restoration application, therefore, direction be issued to the applicant to provide the same so that they may file objection, if any.</p> <p style="text-align: center;">Let copy of restoration application be provided to the Ld. Counsel for the respondents by today itself.</p> <p style="text-align: center;">Respondents may file objection, if any, within two weeks.</p> <p style="text-align: center;">List on 23.11.2021.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) Member (A) (Justice Umesh Chandra Srivastava) Member (J)</p> <p>AKD/-</p>

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.1

Ex. A. No. 71 of 2019 with M.A. No. 631 of 2021 Inre : O.A. No. 591 of 2018

Ex. Gnr. Ratan Maity
By Legal Practitioner for the Applicant

Applicant

Versus

The CO & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>08.10.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p style="text-align: center;">Heard Shri Rohit Kumar, Ld. Counsel for the applicant and Shri Ashish Kumar Singh, Ld. Counsel for the respondents.</p> <p><u>M.A. No. 631 of 2021</u></p> <p style="text-align: center;">Applicant has made this application to implead Manager, State Bank of India, Khejuri Branch, Village – Khejuri, West Medinipur, West Bengal which is allowed.</p> <p style="text-align: center;">Let amendment be made by today itself and thereafter notice be issued to the newly made party returnable within four weeks.</p> <p style="text-align: center;">Steps for notice be taken within a week.</p> <p style="text-align: center;">List on 02.12.2021.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) Member (A)</p> <p style="text-align: center;">(Justice Umesh Chandra Srivastava) Member (J)</p> <p>AKD/-</p>

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Court No.1

Ex. A. No. 112 of 2019 Inre : O.A. No. 87 of 2016

Ex. Nk. (TS) Diwan Singh
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>08.10.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p style="text-align: center;">Heard Shri Parijaat Belaura, Ld. Counsel for the applicant and Shri Amit Jaiswal, Ld. Counsel for the respondents assisted by Shri Rajiv Tiwari, Assistant Accounts Officer, Principal Controller of Defence Accounts (Pension), Prayagraj (Allahabad).</p> <p style="text-align: center;">It is submitted by the Ld. Counsel for the respondents that in terms of R.S.M.B. proceedings Corrigendum P.P.O. has been issued on 07.10.2021. He further submits to some time to bring the said P.P.O. on record.</p> <p style="text-align: center;">Let Corrigendum P.P.O. be brought on record within two weeks.</p> <p style="text-align: center;">List on 03.12.2021.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) Member (A)</p> <p style="text-align: center;">(Justice Umesh Chandra Srivastava) Member (J)</p> <p>AKD/-</p>

Form No. 4
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ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.1

Ex. A. No. 25 of 2021 Inre : O.A. No. 536 of 2019

Ex Sep Kamlesh Chaudhary
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>08.10.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p style="text-align: center;">Heard Shri V.P. Pandey, Ld. Counsel for the applicant and Shri Anurag Mishra, Ld. Counsel for the respondents.</p> <p style="text-align: center;">On the request of Ld. Counsel for the respondents, two weeks further time is granted to file affidavit of compliance.</p> <p style="text-align: center;">List on 30.11.2021.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) Member (A)</p> <p style="text-align: center;">(Justice Umesh Chandra Srivastava) Member (J)</p> <p>AKD/-</p>

