

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

M.A. No 137 of 2022 Inre Ex.A. No 11 of 2022 Inre 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>15.02.2022</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>Objection against maintainability on interim relief application is taken on record.</p> <p>Heard Shri R Chandra and Shri KC Ghildiyal, Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents assisted by Maj Sini Thomas, Departmental Representative.</p> <p>In continuance of Execution Application No 11 of 2022, arising out of order dated 07.01.2022 passed in O.A. No 619 of 2021, by which the O.A. has been allowed and respondents have been directed to promote the applicant as Maj Gen (Litigation) in Judge Advocate General's Branch w.e.f. 05.05.2021, this application has been filed for interim relief to the effect restraining respondents from retiring the applicant from service wef 28.02.2022 in the rank of Brig on attaining the age of superannuation of 56 years.</p> <p>Learned counsel for the applicant submits that execution application has been filed by the applicant for implementation of order dated 07.01.2022 passed in O.A. No 619 of 2021. This application was listed for hearing on 28.01.2022 alongwith the application for review filed on behalf of respondents. The leave to appeal was dismissed and hearing in execution application was adjourned to 07.03.2022 on the ground that respondents wanted to file appeal against the decision of Tribunal in the Original Application. He further submits</p> |

that applicant is due for retirement on 28.02.2022 in the present rank. He had filed a writ petition in Hon'ble Apex Court seeking direction to the respondents to implement the order dated 07.01.2022 passed in O.A. and to promote him to the rank of Maj Gen before his retirement. The Hon'ble Apex Court was, however, of the view that as applicant has already filed Execution Application in the Tribunal, he should pursue the same before the Tribunal. The application was , therefore, dismissed as withdrawn.

Learned counsel for the applicant further submits that on promotion to the rank of Maj Gen the applicant shall be able to serve for one year more. However, the respondents, with a view to make the order dated 07.01.2022 passed in O.A. No 619 of 2022 infructuous, are purposely delaying the filing of appeal before the Hon'ble Apex Court, as they are aware that applicant will retire from service on 28.02.2022 in the rank of Brig. He submits that issuing of interim relief is necessary, as if it is not done, order passed in the O.A. would be rendered infructuous.

In support, the applicant has placed reliance on the order dated 26.11.2021 passed by the Principal Bench, Armed Forces Tribunal, New Delhi in *O.A. No 1883 of 2021, Maj Gen Rajiv Mohan Gupta Vs Union of India & Ors* wherein Principal Bench has kept the retirement of the applicant therein in abeyance, till decision of the competent authority on promotion board and order dated 03.09.2020 of the Principal Bench in the case of *Brig KK Nandwani Vs Union of India and others* passed in O.A. No 996 of 2020 and M.A. No 1247 of 2020, wherein the Principal Bench has directed the respondents therein not to retire the applicant till declassification of the result of promotion board. Applicant has further placed reliance on the order dated 19.11.2018 of the Principal Bench in the case of *Maj Gen VK Singh Vs. Union of India and others* passed in M.A. No 2051 of 2018 & M.A. No 1945 of 2018 in O.A. No 1023 of 2018 wherein retirement of the applicant has been kept in abeyance till such time the direction contained in paragraph 30 of the order dated 05.10.2018 in O.A. No 1023 of 2018 is complied with.

In regard to objection raised by the respondents, learned counsel for the

applicant submits that Rule 45 of Armed Forces Tribunal (Practice) Rules, 2009 is not applicable in the present matter. Rule 45 is applicable in pending cases when hearing of the case is required out of turn whereas hearing in the instant case is taking place on its turn, therefore, there is no need to file early hearing application as required in the rule.

In reply, learned counsel for the respondents submits that in view of Rule 45 of The Armed Forces Tribunal (Practice) Rules, 2009, which mandates that early hearing of the case is permissible with leave of Chairperson or in his absence the Vice Chairperson nominated by him in the case of the Principal Bench and before the Vice Chairperson and in his absence before the senior most available Member in the case of Regional Bench. He submits that leave may be sought by filing application before the Principal Bench or Regional Bench, as the case may be, citing reason therein for early hearing. He further submits that instant application for interim relief has been filed in execution application which is listed for hearing on 07.03.2022 and, since early hearing is permitted with leave of Regional Bench only which has not been sought, it deserves to be dismissed.

We have perused Rule 45 of the Armed Forces Tribunal (Procedure) Rules, 2009 (in short 'Rules') which deals with early hearing of the cases. It reads *(1) If early hearing of a case out of turn is required, the party or legal practitioner shall make an application stating the reasons thereof in Form No 10, after serving copy thereof to the other party or parties. (2) The application shall, if in order, be listed before the Bench headed by the Chairperson or in his absence the Vice chairperson nominated by him in the case of the Principal Bench and before the Vice Chairperson and in his absence before the senior most available Member for orders in the case of other Benches.*

On careful reading of the Rule it appears that it is applicable in pending cases when out of turn hearing is required. However it has no application if a new case/ application is filed and it comes for consideration on its own turn, even if it is in continuation to any earlier application, pending or decided.

With above view of matter we find that though present application for

interim relief has been filed in continuation to execution application, but being a new application and relief claimed therein being not in regard to implementation of order for which execution application has been filed, Rule 25 of the Rules has no application in it. Further, interim relief application cannot be held not maintainable for want of early hearing application nor it can be dismissed on this reason, as said in the objection filed by the respondents.

As regards relief claimed in application, the factual position is that original application filed by the applicant for the grant of promotion to the rank of Maj Gen (Litigation) in Judge Advocate General's Branch has been allowed and respondents have been directed to promote applicant to the higher rank wef 05.05.2021. In regard to implementation of the order, applicant has filed execution application which was listed for hearing on 28.01.2022 and was adjourned to 07.03.2022 in view of provisions of appeal laid down under Section 31 of the Armed Forces Tribunal Act. After this, applicant approached the Hon'ble Apex Court for the implementation of the order by filing a writ petition under Article 32 of the Constitution of India which was dismissed as withdrawn on the premise that applicant can pursue the remedy in execution application. It is after this order the applicant has filed this application seeking a restraint order against the respondents from retiring him in the rank of Brig on completing the age of 56 years. The reason behind seeking the relief is that applicant is apprehending that if respondents are not restrained and applicant is made to retire on 28.02.2022, the respondents will deliberately go slow in filing and pursuing the appeal which would then render the order dated 07.01.2022 in O.A. No 619 of 2021 infructuous with passage of time being reduced to a paper decree.

Upon hearing submissions of learned counsel of the parties we observe that since O.A. has been allowed and applicant's right regarding promotion has been crystallised by issuing directions to respondents to promote applicant to the post of Maj Gen wef 05.05.2021, the effect of the order would remain same as it exists today until reversed by a superior Court. This being the position of the order, we do not see reason to allow the prayer of interim relief which is

based on presumption only. The orders of the Principal Bench referred to in the application and relied upon during the course of hearing by the learned counsel for the applicant are distinguishable as in those cases the rights of the applicants therein with regard to promotion were not crystallised whereas it is not so in the instant case.

In view of the above, we find that the meaning and effect of the order dated 07.01.2022 passed in O.A. No 619 of 2021 is quite clear and needs no further clarification in the form of order as claimed in interim relief application.

Interim relief application is **disposed of** accordingly.

Copy of this order be provided to learned counsel for the respondents free of cost.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

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

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.1 (E. Court)

O.A. No. 101 of 2022 with M.A. No. 136 of 2022

Ex Rect Sachin Kumar
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>15.02.2022</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 Shri Amit Jaiswal, Advocate on behalf of the respondents is taken on record. His name shall be shown in the cause list as learned counsel for the respondents.</p> <p>Heard Shri Sudhir Kumar Singh and Shri Abhishek Singh, Ld. Counsel for the applicant and Shri Amit Jaiswal, Ld. Counsel for the respondents.</p> <p>The applicant who was a recruit has filed this application for setting aside the order dated 18.07.2019 passed by the respondent No 3 by which the applicant has been held absent without leave.</p> <p><u>M.A. No. 136 of 2022</u></p> <p>There is a delay of 02 month and 26 days in filing application regarding which an application for condonation of delay has been filed. An affidavit in support of delay condonation application has also been filed.</p> <p>Submission of learned counsel for the applicant is that delay in filing of Original Application is not deliberate, but on account of reasons stated in affidavit filed in support of application.</p> <p>Per contra, learned counsel for the respondents submits that cause shown for the delay is not sufficient.</p> <p>Considering the facts and circumstances of the case, we find that cause shown is sufficient.</p> <p>Accordingly, delay is condoned and delay condonation application is disposed of.</p> <p><u>O.A. No. 101 of 2022</u></p> <p>It is a fit case for adjudication.</p> <p>Admit.</p> <p>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>List this case on 13.04.2022 before the Registrar Court for exchange of pleadings and thereafter list on 11.05.2022 before Tribunal for final hearing.</p> |

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.1 (E. Court)
O.A. No. 417 of 2021

Smt. Ram Dulari Devi W/o Late Ex Hav Virendra 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>15.02.2022</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>Heard Shri Virendra Kumar Gupta, Ld. Counsel for the applicant and Shri Manu Kumar Srivastava, Ld. Counsel for the respondents assisted by Capt Priyanka, Departmental Representative of the respondents.</p> <p>Counter affidavit filed by the respondents is taken on record.</p> <p>In counter affidavit respondents have stated that husband of the applicant had served in Indian Army for a period of 19 years and 19 days before being discharged from service and in regard to that he was in receipt of service pension. They have further stated that after being discharged from service from the Army applicant was re-enrolled in DSC on 28.11.1985 and discharged from DSC service w.e.f. 30.09.2001 after rendering 15 years, 10 months and 03 days qualifying service for which he was granted second service pension for life. They have further stated that applicant's husband died on 09.06.2017 and thereafter, Smt Ram Dulari Devi was granted family pension by the respondents for the services rendered in the Army by her late husband. They have further stated that in regard to services rendered by applicant's husband in DSC he was in receipt of service pension and on his death case of family pension to the applicant was considered by the respondents and applicant has been granted family pension vide PPO No 194202103229, copy of which has been furnished to learned counsel for the applicant for his perusal.</p> <p>In view of the above, submission of learned counsel for the respondents is that grievance raised in O.A. has already been redressed by the respondents, therefore, O.A. should be dismissed being infructuous.</p> <p>Upon hearing submission of learned counsel for the respondents and the fact that applicant has already been granted family pension vide PPO No 194202103229, we find that grievance raised in O.A. has been redressed.</p> <p>In the result O.A. deserves to be dismissed being infructuous.</p> <p>Accordingly, the O.A. is dismissed being infructuous.</p> |

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| | (Vice Admiral Abhay Raghunath Karve) Member (A) | (Justice Umesh Chandra Srivastava) Member (J) |
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Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.1 (E. Court)

O.A. No. 546 of 2021

Ex Nk Itlesh 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>15.02.2022</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>On the case being taken up for hearing Shri Ashok Kumar, Ld. Counsel for the applicant and Shri Alok Kumar Mishra, Ld. Counsel for the respondents are present.</p> <p>Counter affidavit filed by the respondents is taken on record.</p> <p>Learned counsel for the applicant submits that applicant has died on 23.10.2021.</p> <p>Steps for substitution be taken within a week.</p> <p>List on 21.03.2022.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>rathore</p> |

