

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

Ex. A. No. 98 of 2021 Inre : O.A. No. 202 of 2019

Ex. Sep. Jiledar Singh Applicant
By Legal Practitioner for the Applicant : Shri Rohitash Kumar Sharma, Advocate

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents : Shri Shyam Singh, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><u>10.05.2023</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Atul Kumar Jain, Member (A)</u></p> <ol style="list-style-type: none">1. Mr. Rohitash Kumar Sharma, Ld. Counsel for the applicant and Mr. Shyam Singh, Ld. Counsel for the respondents are present.2. Colonel Jagjot Singh, Director, PS-4 (Pension and Legal), Defence Office Complex, KG Marg, Integrated Headquarters of Ministry of Defence (Army), New Delhi is present in person.3. Affidavit filed by Ms. Alka Sharma, Principal Integrated Financial Advisor (PIFA) (Q & M), Sena Bhawan, New Delhi is taken on record.4. A detailed reply has been filed by the Principal Integrated Financial Advisor which in nut shell states that applicant is a case of Pre-2006 discharge in low medical category on his own request on compassionate grounds, and not on medical reasons. His case is covered by Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi-110011 letter No. 16(05)/2008/D (Pension/Policy) dated 19.05.2017 which talks about grant of disability element and not disability pension. It further states that both the applicant and the respondents failed to bring this most important letter to the notice of Tribunal that should have been the basis for the grant of relief which is evident from the fact that this does not find mention in the order dated 18.01.2021 of the Armed Forces Tribunal. The order mentions a notification dated 03.08.2010 issued by the ADGPS which has been rendered redundant by the MoD letter dated 19.05.2017.5. In regard to Armed Forces Tribunal order dated 18.01.2021, the affidavit states that the role of the Office of the Principal Integrated Financial Advisor in case of implementation of order for the grant of disability element/disability pension is to advise the sanctioning authority in light of Policy/Circular on the subject issued by the Ministry of Defence. It further states that case file of the applicant for implementation of order of Armed Forces Tribunal dated 18.01.2021 was received in the office of Principal Integrated Financial Advisor for the first time after almost two years from the date of order on 02.11.2022 and was returned on 04.11.2022 itself which was wrongly stated by the respondents on 09.12.2022 that case file was lying with the office of

Principal Integrated Financial Advisor since 07.12.2022. The case file of the applicant was again received in the office of Principal Integrated Financial Advisor on 20.12.2022 and returned with advise on 16.01.2023 that Armed Force Tribunal order being against the existing policy on the subject, the case may be referred to the Ministry of Defence. It is understood that ADGPS/CFA has submitted the case to the MoD. Thus, it states that delay in implementation of the order is not on the part of PIFA.

6. As regards letter dated 18.01.2023, the affidavit states that letter was drafted by her office hurriedly and clumsily in a span of only two working days without receiving any help from the office of AG (PS). In the letter it is nowhere stated that Tribunal has erred in law in passing the order but the words "Tribunal had erred in law" have been taken from the quoted multiple observations of Apex Court in Judgment dated 19.07.2022 in CA No. 3536 of 2021 contained in the letter which the Tribunal misunderstood to be of the office of PIFA. The affidavit further states that respondents never consulted her office before or after the order and are blaming her office for not concurring the implementation of the order knowing well that her office analyses the order in light of existing policy/circular and makes observations accordingly, which the sanctioning authority may or may not agree. In the case in hand the order passed was against the existing policy on the subject, hence sanctioning authority was advised to refer the matter to the higher forum which was accepted and the matter was referred to MoD.

7. Col. Jagjot Singh states that against the order dated 18.01.2021 of the Tribunal granting disability pension to the applicant @20% for two years from the next date of discharge and holding RSMB of the applicant to assess his present medical position for entitlement of disability pension, the respondents had filed an application seeking 'Leave to Appeal' which was rejected. Thereafter, the respondents processed the case of the applicant for implementation of the order and sent the file to the office of PIFA twice for financial concurrence as the same is necessary for the grant of Government Sanction. The file was returned both the times on one or the other reason. Col. Jagjot Singh further states that it is incorrectly said by the PIFA that sanctioning authority can overrule the advise given by the PIFA and grant Government sanction. Ministry of Defence in the case of grant of Special Family Pension to the NOK of Late Col. Mayank Sony in its letter bearing MoD ID No. 3(1)/2017/D(Pension and Policy) dated 14.12.2021 has ruled out that advise of the Integrated Financial Advisor cannot be overruled. Col. Singh further states that in number of similar cases wherein Tribunals have passed the order for the grant of disability pension and 'Leave to Appeal' has been dismissed and legal opinion has been received in favour of implementation of the order, the Office of PIFA is not granting financial concurrence, but returning the files with observations as a result of which orders are held up and he is being pulled in Courts. He states that 8-9 similar cases are listed today in this Tribunal wherein he has been summoned to explain the reasons of non-compliance.

8. From the above, it is observed that two Wings of the respondent – Union of India i.e. Executive Wing and Finance Wing, involved in implementation of the order passed by the Tribunal are in loggerheads in the name of Rule/Circular issued by the Ministry of Defence instead of working together as a team, as a result of which not

only the order in question is held up despite no Appeal filed there against but a large number of cases of similar nature are also stuck. This a very sorry states of affairs. It is the sole responsibility of the respondent No. 1 – Union of India to give effect to the order dated 18.01.2021 passed by this Tribunal in favour of the applicant as the same has become final for the reasons that no Appeal was filed there against it. The respondent cannot take the excuse that some co-ordinate or linked Department is not according financial concurrence. Such internal procedural reasons have no legal sanctity and cannot be taken note of by this Tribunal. It is for the respondent to find out ways and means to implement the order of the Tribunal or to reach out to its his superior authority in hierarchy. There is nothing on record to show that any such attempt has been made.

9. Therefore, Secretary, Ministry of Defence, Government of India, New Delhi is called upon to show cause on **12.07.2023** as to why contempt proceedings be not initiated against you for not complying with this Tribunal's order dated 18.01.2021.

10. List on **12.07.2023**.

11. Let this order be served to the officer concerned through Registry of this Tribunal as well as AFT Legal Cell for which copy may be given to AFT Legal Cell.

(Vice Admiral Atul Kumar Jain)
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 (Sl. No. 2)

Ex. A. No. 147 of 2022 along with M.A. No. 600 of 2023 (Early Heading Application)
Inre : O.A. No. 60 of 2016

Lt. Col. Mukesh Baboo through Gulnaz Hussain Applicant
By Legal Practitioner for the Applicant : Shri Satendra Kumar Singh, Advocate

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents : Shri Asheesh Agnihotri, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><u>10.05.2023</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Atul Kumar Jain, Member (A)</u></p> <p>1. Heard Col Mukesh Baboo, the applicant in person and Mr Asheesh Agnihotri, Ld. Counsel for the respondents.</p> <p>2. While disposing off the application (O.A. No. 60 of 2016, Lt. Col. Mukesh Baboo Vs Union of India & Others) filed by the applicant under section 14 of the Armed Forces Tribunal Act, 2007, vide order dated 08.02.2021, this Tribunal had directed the applicant to surrender himself to his unit and had directed the respondents to constitute a Re-Survey Medical Board (RSMB) to assess the present medical category of the applicant within one month and to take action against him pertaining to his AWL as per rule position as also dues payable to him and return his personal items, if held.</p> <p>3. After the above order passed by this Tribunal applicant did not surrender himself to his unit as a result of which he was apprehended and put to trial by summary court-martial on charges of desertion and on charges being found proved was dismissed from service vide order dated 2nd June 2022. The punishment awarded to the applicant has been confirmed by the competent authority.</p> <p>4. Applicant is not paid pay and allowances since June 2016 being deserter. He is even not paid retiral dues including provident fund which is his money and has nothing to do with his dismissal. He has been dismissed from service by order dated 2nd June 2022 of summary court-martial and the said order is said to have been confirmed also. In the above circumstances, all retiral dues payable on dismissal ought to have been paid to the applicant within a reasonable time rather letting him to live in penury in the name of preparation of final payment sheet.</p> <p>5. Looking to facts and circumstances of the case, respondents shall release 50% amount of the provident fund to the applicant within four weeks from today and come prepared with full and final payment to be made to the applicant when the case is next listed.</p> <p>6. List on 12.07.2023.</p> <p style="text-align: center;">(Vice Admiral Atul Kumar Jain) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>AKD/-</p>

