

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No. 1 (Sl. No. 15)

O.A. No. 1416 of 2023 with M.A. No. 2052 of 2023

Ex Sub Satya Pal

By Legal Practitioner for the Applicant : Shri K K Misra, Advocate

Applicant

Versus

Union of India & Others

By Legal Practitioner for Respondents : Shri Rajiv Pandey, Advocate

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>07.11.2024</u> <u>Hon’ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon’ble Lt. Gen. Anil Puri , Member (A)</u></p> <p>1. On the case being taken up for hearing Shri K K Misra, Ld. Counsel for the applicant and Shri Rajiv Pandey, Ld. Counsel for the respondents are present.</p> <p>2. Objection on maintainability of the case filed by respondents is taken on record. Reply of objection on maintainability is also taken on record.</p> <p>3. This application has been filed by the applicant with the prayer to quash AMC Records letter dated 02.09.2023 and direct the respondents tp grant 30% disability pension duly rounded of to 50%.</p> <p>4. Learned counsel for the respondents has raised preliminary objection on maintainability of the case and submitted that this O.A. is not maintainable before this Tribunal as the applicant has not availed alternate remedy as contained in Section 21 of the Armed Forces Tribunal Act, 2007 and Para 364 of Defence Service Regulations (Volume-1), Revised Edition 1987. He pleaded that applicant has directly approached this Tribunal, hence this O.A. is not maintainable. He pleaded for dismissal of O.A.</p> <p>5. Reply regarding availing alternate remedy has been filed by learned counsel for the applicant. In reply, learned counsel for the applicant has stated that Section 21 of the Armed Forces Tribunal Act, 2007 merely lays down that</p>

applicant has to avail remedies available to him under the Army Act 1950. Thereby, there has to be a provision in the Army Act and the respective rules and regulations made there under for exhausting this remedy and since this is case of the Army, other Acts are not applicable. He further submitted that Army Act or rule made there under, do not deal with retired personnel and pensionary matters. By and large they deal with personnel in service and thereby, subject to Army Act and not with those who have ceased to be subject to Army Act. The applicant is a retired person and provisions of Army Act are not applicable to him. Thereby, there is no provision in this act which makes it mandatory to exhaust the remedy before approaching this Tribunal. Learned counsel for the applicant has stated that claim of the applicant for grant of disability element was rejected vide order dated 02.09.2023. He pleaded that in a similar matter in the case of O.A. NO 438 of 2023, *Ex Gnr Praveen Kumar Vs Union of India & Others*, decided on 18.04.2023, the O.A. was admitted and objection raised by the respondents on maintainability of the case was rejected. He pleaded that in view of above, objection raised by the respondents on maintainability of the case be rejected and O.A. may be admitted.

6. Heard learned counsel for the parties and perused the record.

7. Section 21 of the Armed Forces Tribunal Act, 2007 being relevant for resolving controversy on maintainability of the case is reproduced as follows :-

“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.
(2) For the purposes 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 :-

(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 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.

8. Section 21 of AFT Act, 2007 restricts the applicant to approach the Tribunal unless he exhausts the statutory remedy provided to him under the Army Act. It is clear that this Tribunal will not ordinarily admit an application until and unless it is satisfied that the remedies available under the Army Act, Navy Act and Air Force Act and the respective rules and regulations made there under have been exhausted.

9. The question in this application, would be as to whether the applicant has exhausted the remedies available to him before invoking the jurisdiction of this Tribunal under Section 14 of the AFT Act 2007. The Government of India and the Ministry of Defence, Department of Ex-serviceman welfare has constituted an Appeal's Committee to consider appeals against rejection of claim for disability pension.

10. Vide Entitlement Rules for Casualty Pensionary Award to Armed Forces Personnel, 1982, and the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel 2008 after superseding the Entitlements Rules 1982 it has been ordered that when a person of the Armed Forces is boarded out on medical grounds or is discharged, released or retired in low medical category, he has a right to appeal against the denial of disability pension which can be filed within six months from the date of rejection of the initial claim.

11. The claim has to be submitted to the record office PBOR/ Service Headquarter (Commissioned Officers) which, in turn shall be forwarded to the Service Headquarters, as the case may be and shall be placed before an Appellate Committee which comprises of the DDG (PS)/equivalent rank in the Air Force and the Navy as Chairman and three members as are stipulated therein. The scheme further provides that in case the individual is not satisfied with the decision of the Appellate Committed for first appeal, he has a right to make another appeal through the Record Office to the Second Appellate Committed constituted vide para 3 of the aforesaid scheme. The Appellate Committed has to decide the second appeal also within six months.

12. From the aforesaid it is clear that in terms of the Entitlement Rules of 2008, a two tier Appellate Forum has been created, conferring a right to first appeal and second appeal to the aggrieved person.

13. Thus, there being remedies available to the applicant against discharge order and the same not being availed by him, the present Original Application is not maintainable under Section 21 of the AFT Act, 2007. It is pertinent to mention here that judgments relied upon by the applicant are not relevant in this case being based on different facts and circumstances, hence, applicant cannot be given the benefit of aforesaid judgments.

14. We find that applicant has preferred the present Original Application with a prayer to direct the respondents to grant 30% disability pension duly rounded off to 50%. without availing the alternative remedy as provided under the provisions of Entitlement Rules of 2008 and Section 21 of the Armed Forces Tribunal Act, 2007 and filed this application. It is a case where the applicant has not exhausted the remedy available under the Entitlement Rules of 2008 and the policy and scheme framed vide letter dated 15.02.2010. So we are of the considered view that the statutory remedy available to the applicant under Section 21 has not been exhausted and at this stage, the instant

Original Application is not maintainable in this Tribunal and it is liable to be dismissed.

15. In view of the aforesaid, we do not find any good reason to by-pass the statutory alternate remedy provided under the Armed Forces Tribunal Act, 2007. The instant Original Application is not maintainable and cannot be admitted for hearing.

16. Accordingly, without entering into the merit of the case, the application is dismissed on the ground of statutory alternative remedy available to him leaving it open to the applicant to file an appeal before the appropriate authority in accordance with the provisions of the Armed Forces Tribunal Act, 2007.

17. No order as to costs.

18. All pending Misc Applications are also disposed off.

(Lt. Gen. Anil Puri)(Justice Anil Kumar)
Member (A) Member (J)
UKT/-