

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

Court No. 2 (Supp No. 8)

O.A. No. 1441 of 2023

Brig Vijendra Singh Joon

Applicant

By Legal Practitioner for the Applicant : Shri Shailendra Kumar Singh, Advocate

Versus

Union of India & Others

Respondents

By Legal Practitioner for Respondents: Shri Namit Sharma, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><u>01.03.2024</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></p> <p>1. On the case being taken up for hearing, Shri Shailendra Kumar Singh, learned counsel for the applicant who is present in Court and Shri Namit Sharma, learned counsel for the respondents who is present through virtual mode.</p> <p>2. Reply filed on behalf of the applicant is taken on record.</p> <p>3. Heard learned counsel for the parties on maintainability of this O.A.</p> <p>4. Written objection has been filed on behalf of the respondents in which it is stated that matters relating to government accommodation being not included in the definition of "service matter" as mentioned in Section 3 (o) of AFT, Act, 2007, this O.A. is not maintainable. Reliance has also been placed by learned counsel for the respondents on the Hon'ble Apex Court judgment in the case of <i>Union of India vs Sh Rasila Ram & Ors</i>, (2001) 10 SCC 623 and order dated 17.08.2015 passed by AFT (PB), New Delhi in the case of <i>Lt Col (Retd) SC Chaturvedi vs Union of India & Ors</i>.</p> <p>5. Reply has been filed on behalf of the applicant in which it is stated that this O.A. has been filed against non redressal of applicant's grievances dated 15.09.2023 and 15.11.2023 preferred for refund of Rs 3,00,840/- which was deducted from applicant's salary in the month of March, 2023. It is further submitted that this O.A. being not related to allotment or eviction of government married accommodation, rather being related to illegal recovery of penal deduction, is maintainable. In support of his contention, learned counsel for the applicant has relied upon order dated 07.02.2022 passed by this Tribunal in O.A. No. 685 of 2020, <i>Sub Upendra Singh vs UOI & Ors</i>, order dated 31.05.2017 passed by the AFT (PB), New Delhi in O.A. No. 839 of 2017, <i>Sep SSN Bhai vs UOI & Ors</i> and order dated 31.05.2023 passed by AFT (PB), New Delhi in O.A. No. 39 of 2022, <i>Col Sunil Kumar uniyal vs UOI & Ors</i>.</p>

6. Brief facts of the case are that applicant while posted at Lucknow was allotted government married accommodation i.e. quarter No 27, MVG Enclave, Lucknow Cantt vide Station Headquarter Cell, Lucknow letter dated 20.07.2020 (Annexure A-3). In the year, 2021 due to marital discord between applicant and his wife, court cases were filed against each other. In the year 2022, applicant was posted out to Delhi vide posting order dated 06.05.2022. He wanted to hand over government accommodation prior to his move from Lucknow, but since his wife did not vacate the said accommodation he was charged damage rate rent (DRR) w.e.f. 24.10.2022 onwards. Accordingly, DRR amounting to Rs 3,00,840/- for the period 24.10.2022 to 23.01.2023 was deducted from applicant's salary for the month of March, 2023. At this stage, the applicant was serving at New Delhi and his wife was occupying government married accommodation. Later, after protracted correspondence, on 20.04.2023, QMG's Branch, IHQ of MoD (Army) issued directions to initiate proceedings for eviction and direction was also issued to hold DRR. Ultimately, the said government accommodation was vacated on 10.07.2023. BSO (East) issued DRR charges of Rs 16,40,667/- for the period 24.01.2023 to 10.07.2023, but since it was on hold vide order dated 20.04.2023, recovery has not been made.

7. This O.A. has been filed for refund of Rs 3,00,840/- and waiver of Rs 16,40,776/-.

8. Section 3 (o) deals with service matters which for convenience sake is reproduced as under:-

“service matters”, in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), mean all matters relating to the conditions of their service and shall include -(i) xxx (ii) tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions.

9. Section 90 of the Army Act, 1950 deals with penal deductions in respect of officers of the Indian Army, which for convenience sake is reproduced as under:-

“The following penal deductions may be made from the pay and allowances of an officer, that is to say,-(a) all pay and allowances due to an officer for every day he absents himself without leave, unless a satisfactory explanation has been given to his commanding officer and has been approved by the Central Government;(b) all pay and allowances for every day while he is in custody or under suspension from duty on a charge for an offence for which he is afterwards convicted by a criminal court or a court-martial or by an officer exercising authority under section 83 or section 84;(c) any sum required to make good the pay of any person subject to this Act which he has unlawfully retained or unlawfully refused to pay;(d) any sum required to make good such compensation for any expenses, loss, damage or destruction occasioned by the commission of an offence as may be

determined by the court-martial by whom he is convicted of such offence, or by an officer exercising authority under section 83 or section 84;(e) all pay and allowances ordered by a court-martial to be forfeited or stopped;(f) any sum required to pay a fine awarded by a criminal court or a court-martial exercising jurisdiction under section 69;(g) any sum required to make good any loss, damage, or destruction of public or regimental property which, after due investigation, appears to the Central Government to have been occasioned by the wrongful act or negligence on the part of the officer;(h) all pay and allowances forfeited by order of the Central Government if the officer is found by a court of inquiry constituted by the Chief of the Army Staff in this behalf, to have deserted to the enemy, or while in enemy hands, to have served with, or under the orders of, the enemy, or in any manner to have aided the enemy, or to have allowed himself to be taken prisoner by the enemy through want of due precaution or through disobedience of orders or willful neglect of duty, or having been taken prisoner by the enemy, to have failed to rejoin his service when it was possible to do so;(i) any sum required by order of the Central Government or any prescribed officers to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said Government to the said wife or child.”

10. There is no dispute that the government married accommodation has been handed over to the allotting authority. Prayer in this O.A. is with regard to refund of DRR and waiver of floated DRR which has been put on hold by the Army authorities.

11. Having perused order dated 31.05.2023 we find that the similar controversy has been decided by AFT (PB), New Delhi in O.A. No. 39 of 2022, **Col Sunil Kumar Uniyal vs UOI & Ors.**

12. A conjoint reading of Section 3 (o) (ii) of the Armed Forces Tribunal Act, 2007 and Section 90 of the Army Act, 1950 makes it clear that cases pertaining to penal deductions may be adjudicated before Armed Forces Tribunal.

13. Case law cited by learned counsel for the respondents being based on different facts and circumstances of the case cannot be relied upon, therefore, objection raised by the respondents is rejected.

14. In view of the above, we are of the view that this O.A. being related to penal deduction is maintainable.

15. Admit.

16. Counter affidavit may be filed within four weeks. Rejoinder affidavit, if any, may be filed within two weeks thereafter.

17. List on **15.07.2024.**

(Maj Gen Sanjay Singh)
Member (A)

(Justice Anil Kumar)
Member (J)

rathore