

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Execution Application No. 154 of 2018**Tuesday, the 21st day August, 2018**Hon'ble Mr. Justice SVS Rathore, Member (J)**
Hon'ble Air Marshal BBP Sinha, Member (A)

AFT Bar Association through its Executive Member, Vijay Kumar Pandey, son of Sri S.N.Pandey, resident of A-1355/6, Indira Nagar, Lucknow, (UP)

..... Applicant

Versus

1. Union of India through Secretary to the Government of India, Ministry of Defence, South Block, R.K. Puram, New Delhi-110011.
2. Chief of the Army Staff, IHQ of MoD (Army), South Block, New Delhi-110011
3. Additional Directorate General Discipline & Vigilance (DV-3A) Adjutant General Branch, Integrated HQ of MoD (Army), New Delhi-110011
4. Commanding Officer, Western Command Provost Unit, PIN-900475,C/O 56 APO
5. OIC Records, Western Command Provost Unit, PIN-900475,C/O 56 APO

.....Respondents

Learned counsel for the Applicant: **Shri R. Chandra, Advocate****In Re:****M.A.No. 1344 of 2017 In Re: O.A. No. 224 of 2018**

Ram Gopal Sharma Applicant

Versus

Union of India & others Respondents

Learned counsel for the Respondents: **Shri Amit Jaiswal, Advocate**

ORDER (Oral)

1. Heard learned counsel for the parties and perused the record.
2. This unique application has been filed by AFT Bar Association for execution of the orders passed on the order-sheets dated 26.02.2018 and 23.11.2017 in OA No. 224 of 2018. The said two orders read as under:

“26.02.2018

Hon’ble Mr. Justice S.V.S.Rathore, Member (J)
Hon’ble Lt. Gen. Gyan Bhushan, Member (A)

Present: Shri Vijay Kumar Pandey, lerned counsel for the applicant and Shri Amit Jaiswal, learned counsel for the respondents.

Learned counsel for the applicant submits that the cost of Rs. 5000/- which was imposed vide order dated 23.11.2017 has not yet been remitted.

Learned counsel for the respondents prays for and is granted two weeks’ further time to remit the aforesaid cost.

List this case on 18.04.2018 for orders.

Meanwhile, learned counsel for the applicant shall file reply to the objection filed by learned counsel for the respondents on the application for condonation of delay.

Sd-/
Lt Gen Gyan Bhushan
Member (A)

Sd/-
Justice S.V.S.Rathore
Member (J)”

“23.11.2017

Hon’ble Mr. Justice D.P. Singh, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)

Present : Shri Vijay Kumar, Ld. Counsel for the applicant and Shri Siddharth Dhaon, Ld. Counsel for the respondents, assisted by Maj Salen Xaxa, OIC Legal Cell.

Shri Siddharth Dhaon, learned counsel for the respondents makes a statement at the Bar that he had

provided a copy of the affidavit to be filed against the delay condonation application to the respondents on 30.10. 2017, but till date, the respondents have not handed over the duly sworn affidavit to him so that it may be placed on record. Prayer has been made for grant of further time to file objection. The functioning of the respondents does not seem to be appropriate. The officer concerned should have sent back the duly signed affidavit to his counsel within the time stipulated. However, as prayed, we grant one week's further time to the respondents to file objection, subject to payment of costs of Rs. 5000/-, which shall be remitted to the AFT Bar Association. Costs shall be recovered from the officer held responsible for the negligence.

List this case for orders on 05.01.2018.

Copy of this order be given to the respondents on usual charges today.

*Sd./-
Air Marshal BBP Sinha
Member (A)*

*Sd./-
Justice D.P. Singh
Member (J)"*

3. On behalf of the respondents, a preliminary objection has been raised regarding the maintainability of the instant execution application. It is submitted that this execution application has been moved through Shri Vijay Kumar Pandey, a Member of AFT Bar Association while there is no resolution of the AFT Bar Association authorising Shri Vijay Kumar Pandey to move such an application. It has also been argued that the AFT Bar Association was not a party in the OA.

4. A perusal of the application shows that it has been moved on the ground that the Bar of the applicant has very huge financial liability and is having no financial assistance from any side and in such circumstances, one of the clients of the applicant has donated his cost in favour of applicant's institution.

5. There was no question of donation of cost by the client of the applicant in the instant case, as averred in the application. The Tribunal's order dated 23.11.2017 clearly show that the cost of Rs. 5000/- was to be remitted to the AFT Bar Association. Shri Vijay Kumar Pandey, Advocate has vehemently argued that in pursuance of Section 29 of the Armed Forces Tribunal Act, 2007, this execution application is maintainable and any person can move such an application.

6. Section 29 of the Armed Forces Tribunal Act, 2007 reads as under:

“29. Execution of order of the Tribunal. — Subject to the other provisions of this Act and the rules made thereunder, the order of the Tribunal disposing of an application shall be final and shall not be called in question in any Court and such order shall be executed accordingly.”

7. A bare perusal of Section 29 of the Armed Forces Tribunal Act, 2007 shows that it would apply only to the orders where the Tribunal has passed some orders “**disposing of an application**”, while in the instant case, OA No. 224 of 2018, wherein the orders aforesaid were passed, is still pending and has not yet been finally disposed of. Apart from it, the law is settled on the point that the application for execution can be moved only by a party to the case. In the instant case, the applicant of OA No. 224 of 2018 Shri Ram Gopal Sharma has not filed any application for execution and surprisingly, it has been filed by AFT Bar Association, who is not a party to the case. That apart, since the OA has not been disposed of by the order under execution, the provisions of Section 29 of the Armed Forces Tribunal Act, 2007 would not come into play.

8. Accordingly, this application is misconceived and being not maintainable is hereby **dismissed**.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

August 21, 2018
LN/-