

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

O.A. No. 121 of 2022

Pooja Kumari, W/o Nk DK Pandey
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>28.02.2022</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 style="text-align: justify;">Memo of appearance filed by Dr. Chet Narain Singh, Advocate today in the court on behalf of the respondents is taken on record.</p> <p style="text-align: justify;">Heard Shri Rajat Pratap Singh and Shri V.P. Pandey, Ld. Counsel for the applicant and Dr. Chet Narain Singh, Ld. Counsel for the respondents.</p> <p style="text-align: justify;">The instant Original Application has been filed by the applicant for publication of Part II Order treating the applicant as first wife and to allow her to live with opposite party No. 5 (Nk D.K. Pandey) and to protect the financial interest of the applicant or to pay maintenance to her and two minor children.</p> <p style="text-align: justify;">Learned Counsel for the respondents has raised a preliminary objection and has submitted that the applicant being not a legally wedded wife of respondent No. 5 (Nk D.K. Pandey) is not subject to the provisions of the Army Act, 1950, and hence, the instant Original Application is not maintainable in this Tribunal being a service matter and it is liable to be dismissed at admission stage itself.</p> <p style="text-align: justify;">His further submission is that in the instant Original Application the applicant has raised her grievances that a Part II Order treating her first wife of respondent No. 5 (Nk D.K. Pandey) be published and she be allowed to live with Nk D.K. Pandey in his unit as his wife with a direction to protect financial interest of the applicant. Since, the status of the applicant as wife of respondent No. 5 is not clear, the applicant cannot be subject to Army Act, 1950. He pleaded for dismissal of the Original Application being not maintainable.</p> <p style="text-align: justify;">In reply to above, Ld. Counsel for the applicant submits that the applicant's marriage with respondent No. 5 was solemnised in 2009 in Holy Shrine of Vaishno Devi by putting vermilion in the forehead of the applicant and since then both are in physical relationship as husband and wife. The respondent No. 5 used to live with her whenever he came on leave. The applicant has been issued dependent card and other certificates in which she</p>

is shown as wife of respondent No. 5. During the pregnancy period, she was admitted/treated in Command Hospital, Lucknow and gave birth to a baby 'Shree' and later on gave birth to a baby 'Shrestha'. In support, so many papers and photographs were produced by the applicant. He pleaded that since the applicant was married to respondent No. 5 and gave birth to two girls, her status being first wife be treated as subject to Army Act, 1950.

Heard Ld. Counsel of both sides and perused the record.

Section 2 of the Armed Forces Tribunal Act, 2007, enumerates the persons, to whom the provisions of the said Act are applicable. It may be reproduced as follows :-

"2. Applicability of the Act.- (1) The provisions of this Act shall apply to all 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).

(2) This Act shall also apply to retired personnel subject to the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950), including their dependants, heirs and successors, in so far as it relates to their service matters".

Section 14 of the Armed Forces Tribunal Act, 2007, in so far as it is relevant for the instant case, is reproduced as under :-

"14. Jurisdiction, powers and authority in service matters .- (1) Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority, exercisable immediately before that day by all courts (except the Supreme Court or a High Court exercising jurisdiction under article 226 and 227 of the Constitution) in relation to all service matters.

(2) Subject to the other provisions of this Act, a person aggrieved by an order pertaining to any service matter may make an application to the Tribunal in such form and accompanied by such documents or other evidence and on payment of such fee as may be prescribed.

(3) On receipt of an application relating to service matters, the Tribunal shall, if satisfied after due inquiry, as it may deem necessary, that it is fit for adjudication by it, admit such application; but where the Tribunal is not so satisfied, it may dismiss the application after recording its reasons in writing.

(4).....

(5) The Tribunal shall decide both questions of law and facts that may be raised before it."

The "service matters" as defined in Section 3(o) of the Armed Forces Tribunal Act, 2007, in so far as it is relevant for the instant case, is reproduced as under :-

"3(o) "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) remuneration (including allowances), pension and other retirement benefits;

(ii) *tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions;*
(iii) *summary disposal and trials where the punishment of dismissal is awarded;*

(iv) *Any other matter, whatsoever,*

but shall not include matters relating to -”

Section 2 of the Army Act, 1950 enumerates the persons, to whom the provisions of the said Act are applicable. It may be reproduced as follows:

“2. Persons subject to this Act.- (1) The following persons shall be subject to this Act wherever they may be, namely:-

- (a) *officers, junior commissioned officers and warrant officers of the regular army;*
- (b) *persons enrolled under this Act;*
- (c) *persons belonging to the Indian Reserve Forces;*
- (d) *persons belonging to the Indian Supplementary Reserve Forces when called out for service or when carrying out the annual test;*
- (e) *officers of the Territorial Army, when doing duty as such officers, and enrolled persons of the said Army when called out or embodied or attached to any regular forces, subject to such adaptations and modifications as may be made in the application of this Act to such persons under sub-section (1) of Section 9 of the Territorial Act, 1948 (56 of 1948);*
- (f) *persons holding commissions in the Army in India Reserve of Officers, when ordered on any duty or service for which they are liable as members of such reserve forces;*
- (g) *officers appointed to the Indian Regular Reserve of Officers, when ordered on any duty or service for which they are liable as members of such reserve forces;*
- (h) *omitted.*
- (i) *persons not otherwise subject to military law who, on active service, in camp, or on the march or at any frontier post specified by the Central Government by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, the regular army.*

(2) Every person subject to this Act under clauses (a) to (g) of sub-section (1) shall remain so subject until duly retired, discharged, released, removed, dismissed or cashiered from the service.”

A person aggrieved by an order or action pertaining to any service matter, may make an application to the Tribunal in view of Section 14(2) of the Armed Forces Tribunal Act, 2007. It clearly shows that the Original Application cannot be moved in the Armed Forces Tribunal, unless, the concerned person is aggrieved by an order or action pertaining to any service matter. The service matter has been defined in Section 3 (o) of the said Act. A bare perusal of the definition of “service matters” indicates that the concerned person must be subject to the Army Act, 1950, the Navy Act, 1957 or the Air Force Act, 1950, as the case may be. Section 2 of the Army Act, 1950, as referred to above, provides about the persons, who are subject to the provisions of the Army Act, 1950. Learned Counsel for the applicant has not been able to show us that the

case of the applicant comes within the purview of any of the clauses of section 2 of the Army Act, 1950. Thus, it is clear that the applicant is not subject to the provisions of the Army Act, 1950.

Since the applicant is not subject to the provisions of the Army Act, 1950, she is not entitled to file the Original Application under Section 14 of The Armed Forces Tribunal Act, 2007, in the Armed Forces Tribunal, because, she is not aggrieved by any order or action pertaining to any service matter. The service matters, as defined above, clearly indicates that it is a condition precedent that the concerned person must be subject to the Army Act, 1950, the Navy Act, 1957 or the Air Force Act, 1950, as the case may be. If the aggrieved person is not subject to the provisions of any of the said Acts, she cannot be said to be aggrieved by any order pertaining to any service matter.

The grievance of the applicant to declare her wife of respondent No. 5 (Nk D.K. Pandey) comes neither under service matters nor subject to Army Act as the status of the applicant as wife of Nk D.K. Pandey is not clear. Hence, the case of the applicant being not a legal heir of respondent No. 5 (Nk D.K. Pandey), who is subject to Army Act, does not come under the purview of service matters.

The instant case of the applicant being a matrimonial dispute is beyond the jurisdiction of this Tribunal for which applicant may approach to a Civil Court/Family Court but not in this Tribunal which is made for service matters only.

In view of the aforesaid discussion, we are of the considered view that the applicant is not subject to the provisions of the Army Act, 1950, and hence, the instant Original Application for adjudication of controversy involved in the present matter, is not maintainable and cannot be admitted for hearing, and it deserves to be dismissed at the admission stage itself.

It is made clear that we have not entered into the merits of the case.

The Original Application **No. 121 of 2022** is, therefore, **dismissed** with liberty to the applicant to take recourse to such remedy as may be permissible under law with regard to the issue in question.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

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