

Form No. 4

{See rule 11(1)}
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No.1 (E. Court)

O.A. No 319 of 2021

Brig Surajit Basu, SM

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Others

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>14.07.2021</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>1. On the case being taken up for hearing Shri KD Nag and Shri R Chandra, Ld. Counsel for the applicant and Shri Sunil Sharma, Ld. Counsel for the respondents.</p> <p>2. Objection against interim relief filed by the respondents 1 to 4 is taken on record</p> <p>3. Heard learned counsel for the parties.</p> <p>4. In view of facts stated in affidavit, amendment is allowed. Amendment be</p>

incorporated during course of day.

5. Aggrieved with no empanelment in list of promotion for the post of Major General in Army Medical Corps by Promotion Board (AFMS) No. 1: AMC held on 23.04.2021, applicant who is in the rank of Brigadier, has filed this application seeking as many as nine reliefs, including relief 8 (vi) to consider his name for promotion in the rank of Major General afresh without taking into consideration the assessment in the ECR for the year 2018 and ACR for the year 2019. In para 7 of the O.A. applicant has stated that he has availed of all the remedies available to him under the prevalent rules and no remedy is available to him under the relevant service Act/Rules/Regulations except to approach the Tribunal.

6. Learned counsel for the respondents 1 to 4 has while raising serious objection against maintainability of O.A. submitted that applicant has filed the present application in violation of Section 21 (I) of the Armed Forces Tribunal Act, 2007 (In short "The Act"). He has submitted that applicant has not preferred statutory complaint against his supersession from promotion for the post of Major General, as required under para 22 of the Promotion Policy of 2016 for AFMS officers, a mandatory requirement under Section 21 (I) of the Act, therefore, O.A. is not maintainable.

7. Learned counsel for the respondents has further submitted that a similar

petition in respect of SCR/ACR has also been filed by the applicant in Armed Forces Tribunal, Principal Bench, New Delhi, therefore, present petition also ought to have been filed in the same Bench to avoid conflict of decision, if any, between two Benches of the Tribunal.

8. He has also submitted that petition in respect of relief 8 (VII) being related to transfer of O.A. in respect of this relief is not maintainable in view of proviso (ii) to Section 3 (O) of the Act. However, this relief being deleted today by the applicant, he did not press his submission.

9. In reply, while admitting that no statutory complaint, as provided under para 22 of Promotion Policy for AFMS Officers has been preferred against supersession, learned counsel for the applicant submitted that provisions of Section 21 (I) of the Act are not mandatory, they are directory in nature only, therefore, if the petition has been filed without exhausting remedies available under prevalent Act/Rules/Regulations, application cannot be thrown away for the same being not maintainable. He submitted that next promotion board is to take place again in November 2021 in which applicant will get a chance to face the board for promotion, and in the event of filing non statutory complaint, there is possibility to miss the chance due to adverse remarks recorded in ECR 2018 and ACR 2019, as complaint consumes a lot of time in disposal, therefore, viewing the matter taking stock of situation the O.A. may be treated as maintainable.

10. He has also submitted that petition filed in Armed Forces Tribunal, Principal Bench, New Delhi being against ECR/ACR of another period has nothing to do with present petition.

11. Before adverting to first point regarding maintainability, we would like to take up Section 21 of the Act which deals with circumstances when application may be admitted for hearing. The Section reads as under:-

“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.”

12. A bare reading of Sub Section (i) of Section 21 shows that ordinarily no application shall be admitted for hearing unless Tribunal is satisfied that applicant

had availed of the remedies available to him under the Army Act, 1950 or the Navy Act, 1957 or the Air Force Act 1950, as the case may be, and respective rules and regulations. The legislature's intent behind incorporating this provision in the Act seems to be not casual, rather, seems to be purposely made so that if any officer feels wronged may approach the appropriate authority and seek redress to his or her complaint. The word "ordinarily" used in Sub Section (I) is not meant to be taken optional on account of its literal meaning treating provision directory. In exceptional cases only, where if

availing of remedies provided in the Act, to which he or she is subject, and rules and regulations made there under may defeat the purpose, application may be filed without exhausting remedies available to him or her.

13. Undisputedly, AFMS follows rules and regulations governing promotions enunciated vide Promotion Policy of 2016 for AFMS, as amended, and para 22 therein reads as under:-

22. Limitation.—The Tribunal shall not admit an application—

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 21 has been made unless the application is made within six months from the date on which such final order has been made; (b) in a case where a petition or a representation such as is mentioned in clause

(b) of sub-section (2) of section 21 has been made and the period of six months has expired thereafter without such final order having been made;

(c) in a case where the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which jurisdiction, powers and authority of the Tribunal became exercisable under this Act, in respect of the matter to which such order relates and no proceedings for the redressal of such grievance had been commenced before the said date before the High Court.

(2) Notwithstanding anything contained in sub-section (1), the Tribunal may admit an application after the period of six months referred to in clause (a) or clause (b) of sub-section (1), as the case may be, or prior to the period of three years specified in clause (c), if the Tribunal is satisfied that the applicant had sufficient cause for not making the application within such period.

14. On reading para 22 it is clear that if an AFMS officer feels wronged due to supersession by a Promotion Board, which has been approved by the Central Government, he or she may seek redress by way of a statutory complaint. It emphatically says that any representation by way of making a Non Statutory Complaint or any other form will not be tenable.

15. Admittedly, applicant who has been superseded to promotion in the rank of Major General by a Promotion Board, and his supersession has been approved by the Central Government, has not preferred any statutory complaint, as provided under para 22 of the Promotion Policy, to the Central Government which is mandatory. Therefore, we hold that application is not maintainable.

16. The applicant cannot be permitted filing of application without exhausting remedies available to him under the promotion policy stated above treating it an exceptional case as applicant is not due to retire in few months, rather he is set to retire in 2023.

17. Regarding other two points, it is suffice to say that matter pending in Armed Forces Tribunal, Principal Bench, New Delhi is not one and the same filed in this Tribunal and relief 8 (VII) has been allowed to be deleted. Therefore, application cannot be held maintainable for these reasons.

18. In view of above, O.A. is dismissed being not maintainable with direction that if applicant prefers a statutory complaint, as envisaged in para 22 of the Promotion Policy for AFMS Officers, the respondents shall decide the same by a speaking and reasoned order within a period of six months from the date of receipt of application under intimation to the applicant.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

UKT/-