

FORM NO.4
(SEE RULE 11 (1))
IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA
ORDER SHEET

APPLICATION No. O.A.No.84/2013

APPLICANT (S)	Lt. Col. S K Mondal
RESPONDENT (S)	Union of India & 4 Others
Legal Practitioner for Applicant (s)	Legal practitioner for Respondents
Mr. Rajiv Manglik Miss Manika Roy	Mr. Mintu Kumar Goswami (Resp. Nos. 1-3 & 5) Mr. Debajyoti Deb (Resp. No. 4)

<u>ORDERS OF THE TRIBUNAL</u>	
	<div style="display: flex; justify-content: space-between;"> <u>Order Serial Number:</u> 3 Dated : 18.11.2013 </div>
	<p>Mr. Rajiv Manglik and Miss Manika Roy, learned counsels appear for the applicant who is also present in person. They file the affidavit of service upon respondent No. 4 which may be kept with the record. Mr. Mintu Kumar Goswami, learned counsel appears for the respondent Nos. 1, 2, 3 and 5. Mr. Debajyoti Deb, learned counsel appears for the private respondent No. 4, who is the estranged wife of the applicant and is present in person. He files his vakalatnama to that effect which may be kept with the record.</p> <p>At the outset, Mr. Goswami raised a preliminary objection regarding maintainability of this application. According to him, Section 21 of the Armed Forces Tribunal Act (AFT Act), 2007 provides that ordinarily the applicant must avail of the remedies available to him under the Army Act, 1950 and the respective rules and regulations made thereunder before he approaches this Tribunal. In this case, according to Mr. Goswami, in case the applicant was aggrieved by the impugned order dated 29.08.2013 from the HQ Eastern Command (DV), then in that case, the applicant should have sought redress of his grievances under the provisions of Section 27 of the Army Act, 1950</p>

which reads as follows:-

*“27. **Remedy of aggrieved officers** – Any officer who deems himself wronged by his commanding officer or any superior officer and who on due application made to his commanding officer does not receive the redress to which he considers himself entitled, may complain to the Central Government in such manner as may from time to time be specified by the proper authority.*

Mr. Manglik, however, objects to the point raised by Mr. Goswami and he is of the view that Section 21 of the AFT Act, 2007 provides for seeking redress of routine military wrong whereas the penal deduction from the applicant's salary for maintenance of the estranged wife actually comes within the purview of the quasi judicial order of the Army Commander under powers vested upon him in accordance with Section 90 and 91 of the Army Act, 1950. Otherwise Section 28 of the Army Act, 1950 gives protection to the applicant that the salary cannot be attached by any Civil Court.

Be that as it may, Mr. Manglik submits that in case the applicant files any complaint under Section 27 of the Army Act, 1950 as a statutory complaint, he is unlikely to be would not get any response for a long period as has been the usual experience. Therefore, the misery of the applicant shall continue. Mr. Manglik further submits that the applicant is now posted in Kolkata and his estranged wife is also living in Kolkata with her parents and the couple should be afforded an opportunity to live together and the applicant is always prepared to accept his wife immediately. The respondent No. 3 GOC-in-C, HQ Eastern Command has not gone into this aspect before he passed the impugned order dated 29.08.2013. Therefore, Mr. Manglik prays that even if the applicant is asked to approach the Central Government for

redress of his grievances then he prays for a stay of operation of the impugned order dated 29.08.2013 so that the Central Government would be in a position to dispose of the complaint of the applicant in an early time frame.

Mr. Goswami as well as Mr. Deb object for grant of any stay of the impugned order dated 29.08.2013 because that would in effect cause hardship to the respondent No. 4, the estranged wife of the applicant, who has not been receiving any remittance from the Government by way of deduction from the salary of the applicant ever since she has been separated. Even after passing of the impugned order dated 29.08.2013, no remittance has still begun in favour of the respondent No. 4.

We have heard the rival submissions of both sides. We are of the view that while the applicant has some prima facie case in the application, it would not be prudent to entertain this application without giving any opportunity to the Central Government to give redress to the applicant.

Therefore, the applicant is at liberty to file a statutory complaint before the Central Government in terms of Section 27 of the Army Act, 1950 within a week. However, for the purpose of expeditious disposal of the said statutory complaint, the applicant shall submit an advance copy directly to the Central Government while the remainder copies of the complaint shall be routed through proper channel.

Be that as it may, we very clearly direct the Central Government to dispose of the statutory complaint of the applicant within 30 days from receipt of the advance copy having due regard to the hardship faced by both sides.

Although Mr. Goswami initially agreed to such order for disposal of the statutory complaint, but later on during dictation of the order, he intervenes and submits that that normally six months should be given to

dispose of the statutory complaint. We are, however, of the view that considering the extraordinary situation in this particular case as explained by the learned counsel for the applicant as also by the learned counsel for respondent No. 4, it requires a very quick disposal by the Central Government for which we grant thirty days' time to them to dispose of the statutory complaint of the applicant after receiving an advance copy of the same.

Let the matter be adjourned till 17.01.2014 for admission pending disposal of the statutory complaint *ibid*. We make it very clear that the matter will be heard for admission as well for interim prayer on the next date in case the statutory complaint is not disposed by then. The prayer for grant of stay made by Mr. Manglik on the impugned order dated 29.08.2013 shall be considered on the next date.

To 17.01.2014 for admission.

A plain copy of the order be given to the parties upon observance of all usual formalities.

(Lt Gen K.P.D. Samanta)
Member (Administrative)

(Justice Raghunath Ray)
Member (Judicial)