

**COURT NO. 1**  
**ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

31.

MA 4702/2023 IN OA 1326/2022

Lt Col Devesh Jayant Joshi	...	Applicant
Versus		
Union of India & Ors.	...	Respondents

WITH

32.

MA 4807/2023 IN OA 1326/2022

Lt Col Devesh Jayant Joshi	...	Applicant
Versus		
Union of India & Ors.	...	Respondents

For Applicant	:	Mr. I.S. Singh, Advocate
For Respondents	:	Mr. Anil Gautam, Sr. CGSC
	:	Mr. Ranvir S. Chhillar, Advocate
	:	Maj A.R. Subramaniam, OIC,

Legal Cell

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE LT GEN P. M. HARIZ, MEMBER (A)

**ORDER**  
**24.11.2023**

OA 1326/2022 was allowed by a Bench of this Tribunal on 16<sup>th</sup> October, 2023 and it was directed that the respondents should issue an order notifying the promotion of the applicant in the rank of Col with original seniority restored, within two weeks from the date of pronouncement of the order. After pronouncement of the order, when it was not implemented, the applicant invoked the jurisdiction of this Tribunal by filing MA 4702/2023 under Section 29 of the Armed Forces Tribunal

Act, 2007 seeking execution of the same. Notice on the said application was issued to the respondents on 6<sup>th</sup> November, 2023 and they were directed to file their compliance. The respondents then filed an application for review of the order vide Dy No. 9171/2023. Both MA 4702/2023 and Review Application filed vide Dy No.9171/2023 were ordered to be listed on 24<sup>th</sup> November, 2023.

2. The Review Application filed vide Dy No.9171/2023 was in fact a miscellaneous application filed by the respondents and, therefore, it was registered as MA No. 4807/2023. In the said application, filed by the respondents, a prayer was made for modification of the directions issued vide orders passed in the OA on 16<sup>th</sup> October, 2023, and on affidavit it was stated that the applicant was facing criminal case No. 101543/2015 under Section 498 (A), 323 IPC read with Section 3 and 4 of Dowry Prohibition Act pending before Addl Junior Civil Judge – Addl Metropolitan Magistrate (Juvenile Court), Ranga Reddy District, Andhra Pradesh since 2015. Under the provisions of Para 541 of the Regulation for the Army, the applicant should have informed the authorities about the pendency of the criminal proceedings against him. As the applicant had not informed the same he was not placed under DV Ban and thus the applicant by suppressing

this fact had obtained a direction of his promotion from this Tribunal.

3. Taking serious notice of the alleged suppression by the applicant, when MA 4807/2023 and the application for execution MA 4702/2023 came up for hearing before a Coordinate Bench of this Tribunal on 10<sup>th</sup> November, 2023, we directed that the order of promotion passed on 16<sup>th</sup> October, 2023 be kept in abeyance.

4. However, now in response to the grounds raised by the respondents in MA 4807/2023, the applicant has filed a detailed affidavit along with various documents which go to show that right from the date of the filing of the FIR against him by his wife and till registration of the criminal case in the Criminal Court, the applicant had been informing his unit and other offices of the same. Therefore, prima facie, on going through the affidavit filed by the applicant, we find that the assertions made by the respondents in the application for modification being MA 4807/2023 are based on wrong statements made in the application filed before this Tribunal. The aforesaid act, if proved, would amount to an offence affecting the administration of justice, as detailed in Section 340 of the Code of Criminal Procedure and the respondents, by filing such an affidavit, have exposed themselves to be tried for an offence under provisions of

Section 340 of the Cr.PC for the offence, as indicated therein read along with the provisions of the Indian Penal Code.

5. That being so, we put the respondents to notice as to why action should not be taken against them for this act of theirs. We direct them to file an affidavit within two weeks. In the meantime, interim order granted on 10<sup>th</sup> November, 2023 in MA 4807/2023 stands vacated and the respondents are directed to comply with the orders passed by this Tribunal on 16<sup>th</sup> October, 2023 in OA 1326/2022 before the next date of hearing.

6. List the matter again on 11<sup>th</sup> December, 2023.

7. Let a copy of this order be provided **DASTI** to learned counsel for the parties.

**[RAJENDRA MENON]**  
**CHAIRPERSON**

**[P. M. HARIZ]**  
**MEMBER (A)**

/vks/