

**COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

2.

MA 1255/2025 in MA 2941/2023 in OA 1281/2021

Sgt Mahesh Kumar (Retd) Applicant
VERSUS Respondents
Union of India and Ors.

For Applicant : Mr. Manoj Kumar Gupta, Advocate
For Respondents : Mr. Rajeev Kumar, Advocate
Mr. Pankaj Sharma, DAV Legal Cell

CORAM

**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)**

O R D E R
01.04.2025

Vide the instant application MA 1255/2025, the applicant has prayed to the effect:-

“7. In view of the facts and circumstances of the case as brought out above for the kind consideration of this Hon’ble Tribunal, the Applicant graciously prays before this Hon’ble Tribunal-To issue directions for attachments of Car, Furniture, Computers, TV, Refrigerator and salary account of the Respondent Officers-in-Charge who are responsible for the delay and for timely compliance of the order dated 20 Mar 2023, and/or pass any such direction as deemed fit in the facts and circumstances of the case.”

2. Whilst accepting notice on behalf of the respondents of which the respondents have advance notice on 10.03.2025 as per the index of the application itself, it is submitted on behalf of the respondents that they have filed a writ petition vide Diary No. 1506586/2025 on 02.03.2025 which was under defects

and which has been re-filed again today by the respondents. It is essential to observe as rightly submitted on behalf of the counsel for the applicant, that what the applicant seeks is the implementation of the order dated **20.03.2023** of this Tribunal in **OA 1281/2021** whereby vide Paras 5 and 6 thereof, it was directed to the effect:-

“5. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled for disability element of pension in respect of disability 'Hypertension'. Accordingly, we allow this application holding that the applicant is entitled to disability element of pension @30% rounded off to 50% with effect from the date of his discharge in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of Union of India Vs. Ram Avtar (Civil Appeal No. 418/2012) decided on 10.12.2014.

6. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order and the amount of arrears shall be paid by the respondents, failing which the applicant will be entitled for interest @6% p.a. from the date of receipt of copy of the order by the respondents.

Pronounced in open Court on this day of 20th March 2023.”

3. It is submitted on behalf of the applicant that more than a period of two years from the date of the order dated 20.03.2023, has elapsed and the respondents have not chosen to comply with the said directions. It is essential to observe that the records of OA 1281/2021 indicate that there was no prayer made by the respondents seeking grant of leave to appeal against the said order dated 20.02.2023 in OA 1281/2021 within the stipulated period of time under Section 31 of the AFT Act, 2007.

4. MA 2941/2023 i.e. the instant application was filed by the applicant of the OA on the date 21.07.2023 seeking implementation of the said order dated 20.03.2023 in OA 1281/2021.

5. Vide proceedings dated 27.07.2023 in MA 2941/2023, vide proceedings dated 14.09.2023 in the said MA, vide proceeding dated 29.11.2023 and vide proceedings dated 12.03.2024, the respondents made submissions seeking four weeks each time to submit the compliance report i.e. the compliance report qua the directions dated 20.03.2023 in OA 1281/2021.

6. On 01.07.2024, however, as per proceedings in MA 2941/2023, it was observed vide Para 3 thereof to the effect:~

“3. A submission is now made on behalf of the respondents that they intend to assail the said order dated 28.03.2023 in OA 1281/2021 by filing a writ petition. In view of the submission made on behalf of the respondents, in the event of there being no stay order of the operation of the order dated 20.03.2023 in OA 1281/2021 being placed on the record by the respondents for the next date of hearing, the affidavit of compliance of the said directions with the demand draft for payment of costs of a sum of Rs. 75,000/- in the name of the applicant towards payment of costs for the anguish and agony caused to the applicant be placed on the record by the respondents,”

the submission was made by the respondents that they intend to assail the order by filing a writ petition. It was directed vide the

said order dated 01.07.2024 in MA 2941/2023 in Para 3 thereof reproduced hereinabove that in the event of there being no stay order of the operation of the order dated 20.03.2023 in OA 1281/2021 being placed on the record by the respondents for the next date of hearing, the affidavit of compliance of the said directions with the demand draft for payment of costs of a sum of Rs. 75,000/- in the name of the applicant towards payment of costs for the anguish and agony caused to the applicant be placed on the record by the respondents with the matter having been re-notified for the date 02.09.2024. On 02.09.2024 in MA 2941/2023, the costs as imposed vide order dated 01.07.2024 were not paid by the respondents which were directed to be paid without default on the next date of hearing with it having been further directed vide Para 3 of the proceedings dated 02.09.2024 which reads to the effect:-

“3. In the event of there being no stay order of the operation of the order dated 20.03.2023 in OA 1281/2021 being placed on the record by the respondents on the next date of hearing, the matter is re-notified for consideration of initiation of coercive action, if any required, against the respondents.”

with it thus having been directed to the effect that the matter be re-notified for consideration of initiation of coercive action, if any required, against the respondents with the matter having been re-notified for the date 07.11.2024.

7. On 07.11.2024, the respondents reiterated that they intend to assail the order of which implementation is sought,

submitting to the effect that the payment of costs as imposed in the present proceedings was under process. On the date 03.03.2025, the costs of the amount of Rs. 75,000/- were paid vide a demand draft bearing No. 712033 dated 22.11.2024 in the name of the applicant towards payment of costs of a sum of Rs. 75,000/- which in view of the *Vakalatnama* of the counsel for the applicant placed on the record of OA 1281/2021 is handed over to the counsel for the applicant under signatures of receipt.

8. It was submitted then on behalf of the respondents as is submitted today that they have filed a writ petition vide Diary No. 1506586/2025 on 02.03.2025 before the Hon'ble High Court of Delhi to assail the order of which implementation is sought by the applicant. Vide proceedings dated 03.03.2025 it was specifically observed by this Tribunal that there is nothing on record to indicate that the matter was listed before the Hon'ble High Court of Delhi, however, there was no stay order of the operation of the order of which implementation is sought. Vide Para 3 of the order dated 03.03.2025, it was observed to the effect:~

“3. In the circumstances, it is open to the applicant to seek redressal by moving an application in terms of Order XXI Rule (11) (2) (j) of CPC, 1908, as amended, seeking to put forth the mode of assistance sought by the applicant. As and when such application is filed, the Registry is directed to re-notify the matter.”

9. It was thus directed that it was open to the applicant to seek redressal by moving an application in terms of Order XXI Rule (11) (2) (j) of CPC, 1908, as amended, seeking to put forth the mode of assistance sought by the applicant, as and when such application is filed, the Registry was directed to re-notify the matter. Significantly, it is essential to observe that vide proceedings at 2:15 P.M. on 03.03.2025, it was observed to the effect that the demand draft bearing No. 712033 dated 22.11.2024 that had been handed over on behalf of the respondents in favour of the applicant towards payment of costs for a sum of Rs. 75,000/- being dated 22.11.2024 was no longer valid and the said demand draft was returned to Wg Cdr T.N. Swamy, OIC Legal Cell, who was present, with it having been directed to the effect that a revalidated demand draft be submitted with the matter having been re-notified in relation thereto for the date 28.04.2025.

10. In terms of directions in Para 3 of the order dated 03.03.2025 in MA 2941/2023, on behalf of the applicant has been submitted the instant application MA 1255/2023 with the prayers therein as already adverted to hereinabove in Para 1.

11. Vide Para 5 of this application it has been submitted to the effect:~

“5. Therefore, in absence of the said bank account details, the Applicant is filing the present MA before this Hon’ble Tribunal to issue directions for attachment of the furniture and other personal goods of the officers who are in charge of the

below mentioned Respondents Departments and are equally responsible for the non-compliance of the order dated 20 Mar 2023.

NO.	Respondent Name	Head/Officer -in-Charge
<i>R-2</i>	<i>The Chief of Air Staff Air Headquarters (VB) Rafi Marg, New Delhi-110102</i>	<i>Air Chief Marshal Amar Preet Singh PVSM AVSM</i>
<i>R-3</i>	<i>Air Cmde AV Directorate of Air Veterans Subroto Park, New Delhi-110010</i>	
<i>R-4</i>	<i>JCDA, AF Subroto Park, New Delhi-110010</i>	

”

12. Vide Para 6 of this application it has been submitted to the effect:~

“6. The Applicant hereby requests the Hon'ble Tribunal to issue directions in accordance with the powers granted to the Hon'ble Tribunal by larger Bench in Col Mukul Dev case and also under Rule 25 of the Armed Forces Tribunal (Procedure) Rules 2008 and as per the orders dated 19.05.2014 of the Hon'ble High Court of Punjab & Haryana in Navdeep Singh vs. Union of India & Ors. For attachment of the abovementioned officers' Car, furniture, Computers, TV, Refrigerator and salary account of officers-in-charge for timely compliance of the order passed by this Hon'ble Tribunal.”

13. It is essential to observe that vide judgment dated 19.05.2014 of the Hon'ble High Court of Punjab and Haryana in *Navdeep Singh vs. Union of India and Ors.* in C.W.P 27324/2013 it has been observed to the effect:~

“CWP NO. 27324 of 2013 (O&M)

The principal issue raised in the present petition was a grievance made by the petitioner on account of lack of enforcement mechanism qua the orders passed by the Armed Forces Tribunal.

“Powers of the Tribunal with regard to certain orders and directions:~1

Nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.”

The aforesaid aspect has been elucidated in the written statement filed by the Union of India to the effect that in doing so the Tribunal can even adopt any of the recourses, ordinarily observed in the Civil Court in executing its decrees under Order XXI of the Code of Civil Procedure, 1908.

In view of the aforesaid stand, learned counsel for the petitioner states that the grievance of the petitioner really does not subsist as the matter stands elucidated.”

14. Significantly vide order dated 31.07.2024 in connected matters CA 4/2014, CA 7/2014, CA 1/2013 previously numbered as CA 25/2013 with MA 4861/2023 with MA 4862/2023, OA 408/2017, AFT (RB) (Chd), CA 2/2023 previously numbered as CA 40/2023 with MA 4863/2023 in OA 408/2017, AFT (RB) (Chandigarh), CA 4/ 2022 in OA bearing previous No. 2740/2017 AFT (RB) (Chandigarh) with MA 497/2024 and now numbered as OA 431/2024 before AFT(PB), New Delhi, the operation of which has not been stayed by the Hon’ble High Court of Delhi in W.P. (C) 12769/2024 filed by the Union of India to assail the same, question no. 2 framed by the Larger Bench which reads to the effect:~

“To include any other question, as may be considered relevant by the Larger Bench to the issue in question inclusive of the

scope and ambit of Section 29 of the AFT Act, 2007 for effecting compliance/execution of the orders of this Tribunal.”

was answered by this Tribunal vide Paras 261 and 262 of the said order dated 31.07.2024 to the effect:-

“261. In relation to the said aspect, it is apparent that as conceded by the respondents and as submitted by them before the Hon’ble High Court of Punjab and Haryana in Navdeep Singh Vs Union of India 2014 SCC OnLine P&H 9948, any of the recourses ordinarily observed by the civil Courts in executing decrees under Order XXI of the Code of Civil Procedure 1908, as amended are fully within domain of the application by this Tribunal.

262. Section-29 of the AFT Act, 2007 provides to the effect:-

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.”

Furthermore, in terms of section 23 of the AFT Act 2007 the powers of this Tribunal are not limited to the procedure laid down in the Code of Civil Procedure 1908 and this Tribunal can lay down its own procedure for adjudication of the lis before it in accordance with the principles of natural justice and subject to other provisions of the AFT Act 2007. Furthermore, it cannot be also be overlooked that Rule-25 of the Armed Forces Tribunal (Procedure) Rules, 2008 expressly provides that:

“25. Powers of the Tribunal with regard to certain orders and directions:-Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.”

(it is essential to observe that the said aspect of execution is already pending consideration in Hon'ble Court 1 of the Principal Bench of this Tribunal in MA 5386/2023 in OA 2891/2022 and in Suo Moto execution case no. 2811/2024 in the case of Suo Moto (AFT) vs. UoI & Ors. As already adverted to hereinabove in para no. 189-190)

Issue No. 2 is answered accordingly.”

thus, making it apparent that in terms of Section 23 of the AFT Act, 2007, the powers of the Tribunal are not limited to procedures laid down in the Code of Civil Procedure, 1908, and the Tribunal can lay down its own procedure for adjudication of the *litis* before it in accordance with principles of natural justice and subject to the other provisions of the AFT Act, 2007. Furthermore, it has already been conceded by the respondents before the Hon'ble High Court of Punjab and Haryana in *Navdeep Singh Vs. Union of India & Ors.* In 2014 SCCOnline P&H 9948 to the effect that any of the recourses ordinarily observed by the Civil Courts in executing the decrees under Order XXI of the CPC 1908, as amended, are fully within the domain of application by this Tribunal and the same is no more in issue.

15. Vide judgment dated 06.03.2025 of the Hon'ble Supreme Court in *Periyammai (Dead Thr. Lrs.) vs V. Rajamani And Anr. Etc.*, vide directions in Para 73, 74 and 75 thereof it has been directed to the effect:-

*“73. It is worthwhile to revisit the observations in *Rahul S. Shah (supra)* wherein this Court has provided guidelines and*

directions for conduct of execution proceedings. The relevant portion of the said judgment is reproduced below:

“42. All courts dealing with suits and execution proceedings shall mandatorily follow the below mentioned directions:

42.1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order 10 in relation to third-party interest and further exercise the power under Order 11 Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third-party interest in such properties.

42.2. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the court, the court may appoint Commissioner to assess the accurate description and status of the property.

42.3. After examination of parties under Order 10 or production of documents under Order 11 or receipt of Commission report, the court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.

42.4. Under Order 40 Rule 1 CPC, a Court Receiver can be appointed to monitor the status of the property in question as custodia legis for proper adjudication of the matter.

42.5. The court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.

42.6. In a money suit, the court must invariably resort to Order 21 Rule 11, ensuring immediate execution of decree for payment of money on oral application.

42.7. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.

42.8. The court exercising jurisdiction under Section 47 or under Order 21 CPC, must not issue notice on an application

of third party claiming rights in a mechanical manner. Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

42.9. The court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

42.10. The court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to sub-rule (2) of Rule 98 of Order 21 as well as grant compensatory costs in accordance with Section 35-A.

42.11. Under Section 60 CPC the term “... in name of the judgment-debtor or by another person in trust for him or on his behalf” should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.

42.12. The executing court must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

42.13. The executing court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the police station concerned to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the court, the same must be dealt with stringently in accordance with law.

42.14. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the court personnel/staff executing the warrants, carrying out

attachment and sale and any other official duties for executing orders issued by the executing courts.” (Emphasis supplied)

*74. The mandatory direction contained in Para 42.12 of *Rahul S. Shah (supra)* requiring the execution proceedings to be completed within six months from the date of filing, has been reiterated by this Court in its order in *Bhoj Raj Garg v. Goyal Education and Welfare Society & Ors.*, Special Leave Petition (C) Nos. 19654 of 2022.*

75. In view of the aforesaid, we direct all the High Courts across the country to call for the necessary information from their respective district judiciary as regards pendency of the execution petitions. Once the data is collected by each of the High Courts, the High Courts shall thereafter proceed to issue an administrative order or circular, directing their respective district judiciary to ensure that the execution petitions pending in various courts shall be decided and disposed of within a period of six months without fail otherwise the concerned presiding officer would be answerable to the High Court on its administrative side. Once the entire data along with the figures of pendency and disposal thereafter, is collected by all the High Courts, the same shall be forwarded to the Registry of this Court with individual reports.”

16. It is apparent thus that the Tribunal needs to ensure implementation of its directions dated 20.03.2023 in OA 1281/2023 expeditiously without any demur in view of the factum that there is no order of stay of the operation of the said order on the record till date.

17. The submission on behalf of the respondents made that they have filed a writ petition vide diary No. 1506586/2025 which was under defects and is being re-filed today is of no assistance to the respondents.

18. Thus, in terms of Section 60(i) of the Code Civil Procedure 1908, as amended which applies fully to all execution

proceedings before this Tribunal and whereby it has been legislated to the effect:-

“60. Property liable to attachment and sale in execution of decree- (1) The following property is liable to attachment and sale in execution of a decree, namely lands, houses or other buildings, goods, money, bank notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, moveable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following properties shall not be liable to such attachment or sale, namely:-

(a)
(b)

.

.

.

.

.

(i) salary to the extent of [the first [one thousand rupees]] and two-thirds of the remainder] [in execution of any decree other than a decree for maintenance]:

[Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty-four months, be finally exempt from attachment in execution of that decree;]

[Explanation I. ~ The moneys payable in relation to the matters mentioned in clauses (g), (h), (i), (ia), (j), (l) and (o) are exempt from attachment or sale, whether before or after they are actually payable, and, in the case of salary, the attachable portion thereof is liable to attachment, whether before or after it is actually payable.]

[Explanation II ~ In clauses (i) and (ia)] “salary” means the total monthly emoluments, excluding any allowance declared exempt from attachment under the provisions of clause (l), derived by a person from his employment whether on duty or on leave.”

Explanation III.....

Explanation IV.....

Explanation V.....

Explanation VI.....

[(1A) Notwithstanding anything contained in any other law for the time being in force, an agreement by which a person agrees to waive the benefit of any exemption under this section shall be void.]

(2) Nothing in this section shall be deemed to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land.”

and taking into account the application filed by the applicant MA 1255/2023 dated 07.03.2025 seeking assistance of this Tribunal in terms of the Order XXI Rule (11) (2) (j) of CPC, 1908, as amended, with averments made therein in Para 5 and 6 thereof already reproduced elsewhere hereinabove in Paras 11 and 12, it is directed that apart from leaving the salary to the extent of the first Rs. 1000 and 2/3rds of the remainder of the same of the month of April 2025 of the JCDA AF Subroto Park, New Delhi, the balance 1/3rd of the salary of the JCDA AF Subroto Park New Delhi minus the first amount of Rs. 1000/- of the month of April of 2025, is directed to be attached and the

amount of the said salary is directed to be deposited with the Armed Forces Tribunal (PB) New Delhi, into the account of the Armed Forces Tribunal (PB), New Delhi, A/C No. 30991673383, IFSC No. SBIN0001076 by the date 01.05.2025. The release of the said amount would be subject to further directions in the present MA 1255/2025, the matter be however re-notified for the date **28.04.2025** in MA 2941/2023 as already fixed.

Copy of this order be given ***DASTI***.

**(JUSTICE ANU MALHOTRA)
MEMBER (J)**

**(LT GEN C.P. MOHANTY)
MEMBER (A)**

/nmk