

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

28.

MA 3315/2023 in OA 87/2019

Sub RS Kumaran

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

: Mr. S S Pandey, Advocate

For Respondents

: Major A.R. Subramaniam, OIC, Legal Cell

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER
04.10.2023

Taking note of the facts and circumstances of the case and the prayer made in this application under Section 29 of the Armed Forces Tribunal Act 2007, prima facie we are of the considered view that this application under section 29 is not the appropriate forum for the applicant to seek relief. Section 29 gives power to this Tribunal to execute order of the Tribunal. However, what is prayed in this application under Section 29 is to set aside an order passed by the respondents on 08.07.2021 vide Annexure A 4 and grant relief to the applicant.

Raising a claim for grant of pay fixation and other benefit, applicant invoked the jurisdiction of this Tribunal under Section 14 in OA 87/2019 and when the matter came up for consideration before this Tribunal vide Annexure A 1 on 06.08.2019 after taking note of certain orders passed in OA 113/2014 *Sub Chittar Singh and Others Vs. Union of India and others* on 09.12.2016 and OA 1610/2016 titled *Sub*

Sadeesh Kumar Vs. Union of India & Ors. in Para 5, the OA was disposed off in the following manner:-

“5. In case, the applicant is entitled for the relief(s) in the light of the aforesaid judgments, same be granted to him, otherwise a speaking order be passed within a period of six months from the date of receipt of copy of the order, which be communicated to the applicant.”

Now in pursuance to the order passed in Para 5, when respondents have rejected the claim of the applicant by order Annexure A 4 dated 08.07.2021, inter alia contending that the reasons given in the order Annexure A 4 is contrary to the law laid down in the case of Sub *Chittar Singh and Sub Sadeesh Kumar* and also a subsequent judgment of this Tribunal in various cases collectively decided by a common order passed on 03.09.2021 in OA 1182/2018 *Sub Mahendra Lal Shrivastava Vs. Union of India & Ors.* this application has been filed for execution by contending that now a direction should be issued for implementing and granting benefit to the applicant also as has been granted to other similarly situated employees like *Sub Mahendra Lal Shrivastava (supra)* and others.

Once the respondents, after examining the case of the applicant, in pursuance to the orders passed in OA 87/2019 for reasons which may be good, bad or otherwise unsustainable in law have rejected the claim of the applicant on 08.07.2021 until and unless this order is not set aside in an execution proceedings, benefit cannot be granted to the applicant. That being so, we are of the considered view that the applicant in all fairness should have challenged the order Annexure A 4 in a proceeding

under Section 14, got it set aside and then sought execution of the order. The procedure followed for execution is not appropriate. In a proceeding under Section 29, this Court cannot evaluate the illegality or otherwise of the order Annexure A-4 dated 08.07.2021 and grant benefit to the applicant merely on the basis of judgment in the case *ML Shrivastava (supra) & Ors.* Accordingly, granting liberty to the applicant to challenge the order Annexure A 4 dated 08.07.2021 and seek appropriate relief in a proceeding under Section 14, this application stands disposed off. $\wedge$

[RAJENDRA MENON]
CHAIRPERSON

[C.P. MOHANTY]
MEMBER (A)

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