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ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Review Application No.14 of 2011 In Re:T.A. No. 68 of 2010

Friday this the 21st day of October, 2011

“Hon’ble Mr. Justice Janardan Sahai, Member (J)
Hon’ble Lt. Gen. P R Gangadharan, Member (A)”

Ex Lt Col Ranjodh Singh (SL-
4092P) aged about 48 years/o
Shri Kehar Singh, Additional
Officer, HQ Uttar Bharat
Area, Bareilly(U.P.)

.....Applicant

By Legal Practitioner Shri Lalit Kumar, Advocate.

Versus

1. The Union of India
Through Secretary Ministry of
Defence, South Block, New
Delhi.
2. Chief of the Army Staff,
Integrated HQ of Ministry of
Defence (Army), New Delhi.
3. The General Officer
Commanding-in-
Chief, Central Command,
Lucknow (U.P.)
4. The General Officer
Commanding Uttar Bharat





Area, Bareilly (U.P.)

5. The Commandant
Kumaon Regimental Centre
Ranikhet (Uttarakhand)
.....Respondents

By Legal Practitioner Shri Alok Mathur, Sr. Standing Counsel.

ORDER

1. This review application has been filed against the order dated 05.10.2010 passed by the Tribunal in T.A.No.68 of 2010. The order was passed in exercise of the appellate powers under section 15 of the Armed Forces Tribunal Act. Sri Alok Mathur, learned Sr.Standing Counsel, has raised a preliminary objection regarding the maintainability of the review application and he has confined his arguments to this point. He submits that there is no provision for review of an order passed by the Tribunal in exercise of the powers under section 15 of the Armed Forces Tribunal Act. The contention of Sri Lalit Kumar, learned counsel for the applicant is that the review is maintainable under the provisions of section 15 (6) (f), which reads as under:

“15. Jurisdiction, powers and authority in matters of appeal against court-martial-

(1) Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable under this Act in relation to appeal against any order, decision, finding or sentence passed by a court-martial or any matter connected therewith or incidental thereto.

(2).....



(3).....

(4).....

(5).....

(6) *Notwithstanding anything contained in the foregoing provisions of this section, the Tribunal shall have the power to –*

(a).....

(b).....

(c).....

(d).....

(e).....

(f) *pass any other order as it may think appropriate.*

(7).....”

He also submits that the power of review can be conferred by the statute either specifically or by necessary implication and he submits that the provisions of section 14(4)(f) of the AFT Act would also be applicable to the proceedings under section 15 of the Act. Learned counsel submitted that a trial by Court Martial is not strictly speaking a purely criminal matter but in fact one of the principal objects of such trial is to maintain discipline in the armed forces and maintenance of discipline is actually a service matter and, therefore, section 14(4)(f) is applicable.

2. In support of the contention that the power of review can be conferred either specifically or by necessary implication, learned counsel for the applicant placed reliance upon the case of

Patel Narshi Thakershi and others v. Pradyumnsinghji

Arjunsinghji, AIR 1970 SC1273. To appreciate the contentions,



we would refer to the provisions of the AFT Act. Section 14 of the AFT Act, which deals with original jurisdiction of the Tribunal in service matters, reads as under:

"14. Jurisdiction, powers and authority in service matters-(1) Save as otherwise expressly provided in this Act, the Tribunal shall exercised, on and from the appointed day, all the jurisdiction, powers and authority, exercisable immediately before that day by all courts(except the Supreme Court or a High Court exercising jurisdiction under article 226 and 227 of the Constitution) in relation to all service matters.

(2) Subject to the other provisions of this Act, a person aggrieved by an order pertaining to any service matter may make an application to the Tribunal in such form and accompanied by such documents or other evidence and on payment of such fee as may be prescribed.

(3) On receipt of an application relating to service matters, the Tribunal shall, if satisfied after due inquiry, as it may deem necessary, that it is fit for adjudication by it, admit such application; but where the Tribunal is not so satisfied, it may dismiss the application after recording its reasons in writing.

(4) For the purposes of adjudicating an application, the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908(5 of 1908), while trying a suit in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of section 123 and 124 of the Indian Evidence Act,1872(1 of 1872),requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;



(g) dismissing an application for default or deciding it ex parte;

(h) setting aside any order of dismissal of any application for default or any order passed by it ex parte; and

(i) any other matter which may be prescribed by the Central Government.

5. The Tribunal shall decide both questions of law and facts that may be raised before it."

It is clear that in so far as original jurisdiction of the Tribunal in service matters is concerned, the power of review has been specifically conferred. The appellate powers of the Tribunal have been conferred by section 15,16 and 17. The power of the Tribunal in section 15,16 and 17 is to be exercised as an appellate power against the orders, findings and decisions of Court Martial. There is no specific provision of review in section 15,16 or section 17 of the AFT Act. Sub-section (6) of section 15 of the Act deals with the scope of the power of the Tribunal when deciding the appeal itself or during the pendency of the appeal. This would also be clear from other clauses of sub-section (6),namely, clauses (a),(b),(c),(d), and (e),which appear to be applicable during the pendency of the appeal or to final disposal of the appeal. The power of authorizing re-trial can be exercised by the Tribunal under section 16 of the Act. The other powers of the Tribunal are contained in section 17 of the Act. Section 15,16 and 17 together constitute all the powers conferred upon the Tribunal in exercise of the appellate jurisdiction. A comparison of the provisions of sub-section(4) of section 14 and section 17 of the Act would indicate that the subjects covered in clauses (a),(b)



and (c) have also been dealt with in section 17 which indicates that the Legislature in its wisdom has chosen to cover the appellate powers of the Tribunal under sections 15, 16 and 17. As none of these provisions of sections 15, 16 and 17 contain the power of review, it appears to us that the Legislature did not intend to confer any power of review upon the Tribunal. The distinction between section 14 and 15 is that section 14 is the original jurisdiction of the Tribunal while section 15 is the appellate power and the Legislature in its wisdom might not have found it appropriate to confer the power of review upon the Tribunal in exercise of its appellate jurisdiction. Whether or not a Court Martial is a service matter would not determine the applicability of section 14(4)(f) to section 15 in view of the fact that section 15 constituted the appellate jurisdiction.

3. Learned counsel for the respondents has relied upon a decision of the Supreme Court in *Kalabharati Advertising v. Hemant Vimalnath Narichania and others*, (2010) 9 SCC 437 in which the decision in *Patel Narshi Thakershi and others* (supra) has also been considered. The Supreme Court in para 12 has observed.

“12. It is settled legal proposition that unless the statute/rules so permit, the review application is not maintainable in case of judicial/quasi-judicial orders. In absence of any provision in the Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed is ultra vires, illegal and without jurisdiction. (vide Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar & amp; Anr., AIR 1965 SC 1457; and Harbhajan Singh v. Karam Singh & amp; Ors., AIR 1966 SC 641).”

In our opinion, the power of review has not been conferred upon the Tribunal either specifically or by necessary implication.

4. There is another aspect of the matter. The review application has been filed only against the direction of the Tribunal authorizing re-trial. Learned counsel for the parties have placed before us a copy of the order of the Uttarakhand High Court dated 05.07.2011 in Writ Petition No.173(SB) of 2011. Lt.Col Ranjodh Singh v. Union of India and others in which the order of the Tribunal authorizing the re-trial was challenged. Learned counsel for the applicant submits that the only prayer in that petition was for issuance of a writ of prohibition. Be that as it may, the Uttarakhand High Court has considered the contention of the applicant regarding the validity of the direction authorizing re-trial and has turned it down in the following words:

“The writ petition is against a judgment and order rendered by the Armed Forces Tribunal. By a General Court Martial, petitioner was cashiered and sentenced to undertake imprisonment of five years. Petitioner approached the Tribunal against the order of the General Court Martial. The Tribunal found that petitioner was not given adequate opportunity to cross-examine the prosecution witnesses, and that, he was also not allowed to bring his own evidence. In the circumstances, the Tribunal concluded that there are two options available to it, namely, to allow the petitioner to cross-examine the prosecution witnesses and also to bring his own evidence before the Tribunal or to remit the matter for re-trial. The Tribunal opted for the second option and by the order impugned in the writ petition directed re-trial. It is the contention in the writ petition that the Tribunal was obliged to take further evidence and to conclude the matter. No doubt, the Tribunal had such power. Instead of exercising such power, Tribunal has directed re-trial. It was contended that the Tribunal

could not do so. We are of the view that in view of what has been provided in Sub-Section (2) of Section 16 of the Armed Forces Tribunal Act, 2007, Tribunal had power to direct re-trial and in the facts and circumstances of the case, the Tribunal did exercise such power in consonance with justice, inasmuch as, Tribunal noticed that the conviction is based on a testimony brought on record without permitting cross-examination. In other words, Tribunal found that there was no acceptable evidence justifying the conviction. Sub-Section (2) of Section 16 of the said Act authorizes Tribunal to exercise the power of re-trial, only when it is of the view that the conviction is not sustainable on the basis of evidence brought on record.

2. Learned counsel for the petitioner submitted that when a re-trial will take place, the Members of the Board will stand changed and in consequence thereof there will be miscarriage of justice. The fact remains that the Tribunal concluded that the trial, as was conducted, was not in consonance with law and, accordingly, directed re-trial. Learned counsel further submitted that Section 121 of the Army Act, 1950 prevents a second trial. Learned counsel has not been able to understand the distinction between a second trial and a re-trial, whereas in case of second trial, both the trials are valid; in case of re-trial, it is pronounced that the original trial is invalid and, accordingly, re-trial is directed.

3. We, accordingly, see no merit in the writ petition; the same is dismissed. ”

5. We find merit in the contention of Sri Alok Mathur, learned Senior Standing Counsel that as the challenge to the direction of the Tribunal has failed, it is not open to the applicant to raise this question any more before the Tribunal in review.

6. For the reasons given above, the review application is dismissed as not maintainable.

(Lt. Genl. P.R. Gangadharan)

(Justice Janardan Sahai)

Member (A)

Member (J)

RPS/-