

A.F.R.

ARMED FORCES TRIBUNAL, CIRCUIT BENCH, JABALPUR
(REGIONAL BENCH, LUCKNOW)

Original Application No. 73 of 2014

Tuesday the 25th day of March, 2014

“Hon’ble Mr. Justice S.C. Chaurasia, Member (J)
Hon’ble Air Marshal Anil Chopra, Member (A)”

Deepak Choudhary, No. 15685872F Signalman, S/o Shri Subhash Singh, Faculty of Communication Engineering, Military College of Telecommunication & Engineering, Mhow, District Indore (M.P.).

Applicant

By Legal Practitioner Shri K.C. Ghildiyal, Advocate.

Versus

1. Union of India, Through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of Army Staff, Army Headquarters, DHQ, Post Office, New Delhi.
3. Signal Officer in Chief, Army Headquarters, DHQ, Post Office, New Delhi.
4. The Commandant, Military College of Telecommunication & Engineering, Mhow, District Indore (M.P.).
5. The Officer Commanding Troops, Military College of Telecommunication & Engineering, Mhow, District Indore (M.P.).

6. Havildar Satyavan, Army Aero Nodal Centre, Military College of Telecommunication & Engineering, Mhow, District Mhow, District Indore (M.P.).
7. The Officer-In-Charge, Signal Records, Jabalpur, District Jabalpur (M.P.).

Respondents

By Legal Practitioner Shri Bhanu Pratap Singh Chauhan,
Advocate, Central Government Counsel.

ORDER

Hon'ble Mr. Justice S.C. Chaurasia

1. Heard Shri K.C. Ghildiyal, Learned Counsel for the applicant, Shri Bhanu Pratap Singh Chauhan, Learned Counsel for the respondent Nos. 1 to 5 and 7 and perused the record.
2. Learned Counsel for the respondents has raised a preliminary objection to the effect that this Tribunal lacks jurisdiction to adjudicate the controversy involved in the instant Original Application, on the ground that it does not come within the purview of Section 3(o) of the Armed Forces Tribunal Act, 2007 and hence, it cannot be admitted for hearing and it is liable to be dismissed, on this very ground.
3. Contra to above submission, Learned Counsel for the applicant has submitted that the applicant had filed the Writ Petition No. 9369 of 2011 (S), Deepak Choudhary Versus Union of India and Others, in the Hon'ble High Court of Madhya Pradesh at Jabalpur and the said Writ Petition was dismissed

with the observation that the petitioner is at liberty to approach the Armed Forces Tribunal, constituted under the Armed Forces Tribunal Act, 2007; that the applicant had filed the Review Petition No. 61 of 2012 in the Hon'ble High Court, for review of the said order, but, the Review Petition was permitted to be withdrawn, vide order dated 01.10.2012 of the Hon'ble High Court; that the applicant has filed the instant Original Application, in the light of the order of the Hon'ble High Court of Madhya Pradesh.

4. The Original Application under Section 14 of the of the Armed Forces Tribunal Act, 2007 has been filed on behalf of the applicant and he has claimed the reliefs as under :-

- I. The Hon'ble Tribunal may be pleased to quash the proceedings of Summary Trial held by respondent No. 5 on 10/09/2011. Copy of the proceedings has not been supplied to the applicant. The order passed by respondent No. 4 directing for returning the applicant to his unit may also be quashed.*
- II. The Hon'ble Tribunal may be pleased to direct the respondents to permit the applicant to continue in the Foreman of Signals Course Serial No. FS-122 and permit him to complete the same or in a subsequent course and grant him all the benefits as if he has qualified in Course Serial No. FS-122.*
- III. Any other appropriate order or direction which this Hon'ble Tribunal may deem just and proper in the*

nature and circumstances of the case including cost of the litigation.”

5. Section 14 of the Armed Forces Tribunal Act, 2007, so far as it is relevant for the instant case, is reproduced as under :-

“14. Jurisdiction, powers and authority in service matters. – (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 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)

(5) *The Tribunal shall decide both questions of law and facts that may be raised before it.”*

6. The “service matters” as defined in Section 3(o) of the Armed Forces Tribunal Act, 2007, so far as it is relevant for the instant case, is reproduced as under :-

“3(o) “service matters”, in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), mean all matters relating to the conditions of their service and shall include.

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions;

(iii) summary disposal and trails where the punishment of dismissal is awarded;

(iv) Any other matter, whatsoever,

but shall not include matters relating to-”

7. A person aggrieved by an order pertaining to any ‘service matter’ may make an application to the Tribunal in view of Section 14(2) of the Armed Forces Tribunal Act, 2007. It clearly shows that the Original Application cannot be moved in the Armed Forces Tribunal, unless, the concerned person is aggrieved by an order pertaining to any service matter. The service matter has been defined in Section 3(o) of the said Act. The bare perusal of the definition of “service matters” indicates that the concerned person must be subject to Army Act, 1950, the Navy Act, 1957 or the Air Force Act, 1950, as the case may

be. It is not disputed that the applicant is subject to Army Act, 1950.

8. Now the point for determination is as to whether the present controversy comes within the purview of the “service matters” as defined in Section 3 (o) of the Armed Forces Tribunal Act, 2007?

9. It is not disputed that the summary trial under Section 80 of the Army Act, 1950 was conducted against the applicant and he was awarded 14 days pay fine and was deprived of the rank of Lance Naik.

10. The Section 3(o)(iii) of the Armed Forces Tribunal Act, 2007, as quoted above, clearly indicates that the summary disposal and trials where the punishment of dismissal is awarded only comes within the purview of “service matters”, but, in the instant case while conducting summary trial of the applicant, no punishment of dismissal has been awarded. Since the punishment of dismissal has not been awarded to the applicant in summary trial, the controversy involved in the Original Application does not come within the purview of “service matters”. It is a condition precedent for moving an application under Section 14(2) of the Armed Forces Tribunal Act, 2007 that the concerned person must be aggrieved by an order pertaining to any “service matter”. Since the applicant is not

aggrieved by an order pertaining to any 'service matter', he is not entitled to file the Original Application under Section 14(2) of the Armed Forces Tribunal Act, 2007 for redressal of his grievance.

11. Since the preliminary objection has been raised on behalf of the respondents, with regard to jurisdiction of this Tribunal to adjudicate the controversy involved, we have no option but to consider various provisions of relevant law to determine as to whether this Tribunal has jurisdiction to adjudicate the present controversy. Accordingly, we have considered the relevant provisions of law, as discussed above, and agree with the contention of the Learned Counsel for the respondents. It is true that the applicant has approached this Tribunal for redressal of his grievance by way of alternative remedy, in the light of the order passed by the Hon'ble High Court of Madhya Pradesh, but, when any Original Application is filed by way of alternative remedy, it has to be disposed of in accordance with law. Since this Tribunal lacks jurisdiction to adjudicate the present controversy, with great respect, we find ourselves unable to admit the Original Application for hearing.

12. In view of the aforesaid discussion, we are of the considered view that the applicant is not aggrieved by an order pertaining to any "service matter", as defined in Section 3(o) of

the Armed Forces Tribunal Act, 2007 and hence, this Tribunal lacks jurisdiction to adjudicate the controversy involved in the present case and on account of it, it is not maintainable in this Tribunal. Consequently, it cannot be admitted for hearing and it deserves to be dismissed at the admission stage itself.

13. It is made clear that we have not entered into the merits of the case.

14. The Original Application No. 73 of 2014, Deepak Choudhary Versus Union of India and Others, is dismissed, accordingly.

(Air Marshal Anil Chopra)
Member (A)

(Justice S.C. Chaurasia)
Member (J)

Dwivedi