

A.F.R.

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

Reserved Order

**Transferred Application No. 49 of 2012
(Writ Petition No. 789 of 2008 of High Court of
Uttarakhand at Nainital)**

Friday the 02nd day of May, 2014

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

Laxman Singh.

Applicant

By Legal Practitioner Shri Lalit Kumar, Advocate.

Versus

Union of India and Others.

Respondents

By Legal Practitioner Shri D.K. Pandey, Advocate, Central
Government Counsel.

ORDER

Hon’ble Mr. Justice S.C. Chaurasia

1. Heard Shri Lalit Kumar, Learned Counsel for the applicant, Shri D.K. Pandey, Learned Counsel for the respondents 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

Transferred 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 is liable to be dismissed, on this very ground.

3. Contra to above submission, Learned Counsel for the applicant has submitted that the said objection ought to have been taken as preliminary objection in the pleading and the respondents are not entitled to take said objection at the stage of final hearing.

4. We do not agree with the contention of the Learned Counsel for the applicant, as the objection with regard to lack of jurisdiction of Tribunal can be taken at any stage, even orally, although, the said objection had not been taken by the respondents at the time of filing the written statement. It is the duty of the Tribunal itself to look into the matter and ensure that it has jurisdiction to adjudicate the controversy involved in the instant case, even if no objection in this regard is taken on behalf of the respondents. Since the point with regard to lack of jurisdiction of the Tribunal has been raised on behalf of the respondents, it requires consideration and a clear finding on this aspect.

5. Learned Counsel for the applicant has submitted that the punishment of “Severe Reprimand” awarded to the applicant

after conducting a summary trial comes within the purview of 'service matters' as defined in Section 3(o) of the Armed Forces Tribunal Act, 2007 and hence, this Tribunal has jurisdiction to adjudicate the controversy involved in the instant case; that the statutory complaint filed by the applicant against the said order of punishment has been rejected by the Chief of the Army Staff and this Tribunal has jurisdiction to review the order passed by the Chief of the Army Staff; that no punishment of dismissal can be awarded to the army personnel in summary trial, in view of Section 80 of the Army Act, 1950; that the present controversy comes within the purview of Section 3(o)(iv) of the Armed Forces Tribunal Act, 2007, because, it has not been excluded as per said provision; that the scheme of the Armed Forces Tribunal Act, 2007 indicates that a single forum has been provided for adjudication of all 'service matters'.

6. On the other hand, Learned Counsel for the respondents has submitted that in view of Section 3(o)(iii) of the Armed Forces Tribunal Act, 2007 it is clear that the matters, where the punishment of dismissal only is awarded in summary disposal and trial, are included in the 'service matters' and the punishment of "Severe Reprimand" awarded in summary trial is excluded impliedly and it does not come within the purview of 'service matters' and hence, this Tribunal lacks jurisdiction to

adjudicate the controversy involved in the present case. He has further submitted that the Chief of the Army Staff has passed the order with reference to the punishment of “Severe Reprimand” awarded to the applicant and both the orders cannot stand on different footing.

7. The applicant had filed the Writ Petition No. 789 of 2008 (S/S), Laxman Singh Versus Union of India and Others, in the Hon’ble High Court of Uttarakhand at Nainital, challenging the punishment of “Severe Reprimand” awarded to him and the said Writ Petition has been transferred to this Tribunal under Section 34 of the Armed Forces Tribunal Act, 2007 and it has been registered as Transferred Application. The Transferred Application has to be dealt with in the same manner as in the case of an Application made under Sub-Section (2) of Section 14 in view of Section 34(2)(b) of the Armed Forces Tribunal Act, 2007.

8. 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.”

9. The “service matters” as defined in Section 3(o) of the Armed Forces Tribunal Act, 2007, 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 trials where the punishment of dismissal is awarded;*
- (iv) Any other matter, whatsoever, but shall not include matters relating to-*
 - (i) orders issued under section 18 of the Army Act, 1950 (46 of 1950), sub-section (1) of section 15 of the Navy Act, 1957 (62 of 1957) and section 18 of the Air Force Act, 1950 (45 of 1950); and*
 - (ii) transfers and postings including the change of place or unit on posting whether individually or as a part of unit, formation or ship 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).*
 - (iii) Leave of any kind;*
 - (iv) Summary Court Martial except where the punishment is of dismissal or imprisonment for more than three months;”*

10. 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.

11. 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?

12. 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 punishment of “Severe Reprimand” by the competent authority and the Statutory Complaint filed by him against the said order was dismissed by the Chief of the Army Staff.

13. The point with regard to the jurisdiction of the Armed Forces Tribunal to adjudicate such matters was considered by the Division Bench of the Hon’ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Writ Petition No. 8051 of 1989, Major Kunwar Ambreshwar Singh Versus The Union of India and the said Writ Petition was disposed of finally, vide Judgment dated 20.02.2014.

14. In order to clarify the position, the paragraphs 3, 4, 5, 6, 7, 23, 25, 26 and 27 of the said Judgment dated 20.02.2014 of the Hon’ble High Court may be reproduced as under :-

“3. It appears that Principal Bench of Armed Forces Tribunal, New Delhi has passed an order dated 19.2.2010 and held that the question of punishment with regard to severe reprimand may not be adjudicated by the Armed Forces Tribunal in view of the definition contained in Section 3 of the Act. For convenience, relevant portion from the order passed by the Principal Bench of Armed Forces Tribunal, New Delhi is reproduced as under :

“It may be mentioned that the definition in Section 3(o)(i)(ii)(iii) of the Act is in the nature of substantive law and confers jurisdiction to the Tribunal. However, Section 3(o)(iii) restricts the jurisdiction in the matter of Summary disposal only where the punishment of dismissal is awarded. This provision is clear and unequivocal. No other meaning can be attributed to it nor any aid is required from other provisions of this Act to interpret it. It shall also be beneficial to refer the views expressed by Hon’ble Supreme Court in the case of Oil and Natural Ltd. Vs. Saw Pipes Ltd. 2003(5) SCC 705 holding that “the jurisdiction or the power of Arbitral Tribunal is prescribed under the Act and if the award is dehors the said provisions, it would be on the face of it, illegal. The decision of the Tribunal must be within the bounds and its jurisdiction conferred under the Act or the contract”. In the present case the jurisdiction has been conferred to this Tribunal where in the summary disposal the punishment of the dismissal was awarded. Merely because the consequential reliefs may flow with regard to other service matter

this court cannot usurp jurisdiction. At this stage, learned counsel for the petitioner mentioned that he may like to bring amendments in this petition for availing retiral benefits during the pendency of the petition. That is a separate cause of action and that cannot be mixed up in the present case. Whatever be the position as on today, this court has no jurisdiction. The case is remitted back to Delhi High Court. Parties are directed to appear before Registrar General, Delhi High Court on 12.3.2010 for further date.”

4. *It may be mentioned that the case was remitted back to Delhi High Court.*

5. *Relying upon the aforesaid judgment of Principal Bench of Armed Forces Tribunal, New Delhi, Lucknow Bench of Armed Forces Tribunal has remitted back the writ petition to this Court again by order dated 13.5.2011.*

6. *A perusal of the order dated 13.5.2011 passed by the Armed Forces Tribunal, Lucknow Bench reveals that the tribunal has relied upon the aforesaid order of the Principal Bench of Armed Forces Tribunal, New Delhi.*

7. *A Division Bench of this Court has considered the argument advanced by the parties and while passing order dated 27.5.2013 expressed its opinion that prima facie, the order passed by the Principal Bench of Armed Forces Tribunal, New Delhi is not correct. Under Clause (iv) of Section 3, the Legislature has used the word “any other matter, whatsoever,” which is exhaustive in nature and shall cover the cases of ‘severe reprimand’.*

23. *In view of above, while interpreting the provisions contained in Section 3(o) of the Act, the provisions contained in Clause (iv) containing the words “any other matter, whatsoever,” cannot be excluded. In case these words are not taken into account, it shall make Clause (iv) redundant which is not permissible under interpretative jurisdiction.*

25. *A plain reading of the aforesaid provision reveals that it is not covered by the exception provided under Clause (iv) of Sub-section (o) of Section 3 of the Act. Accordingly, it was not open for the Armed Forces Tribunal to remand back the case to the High Court. The tribunal has been failed to exercise jurisdiction vested in it. The jurisdiction conferred by the statute cannot be diluted or interpreted otherwise by applying the principle of reading down. In case the order of the Principal Bench of Armed Forces Tribunal, New Delhi is upheld, it shall amount to supply of cautious omissus to Section 3 of the Act and deprive the right of army personnel to approach the tribunal for expeditious disposal of a dispute relating to the punishment awarded to them.*

26. *The punishment of ‘severe reprimand’ affect the service career of the army personnel. Even under dictionary meaning, the punishment of ‘severe reprimand’ shall be service matter and be amenable before Armed Forces Tribunal constituted under the Act.*

27. *In view of above, keeping in view statutory mandate as well as the provisions contained in Section 84 of the Army Act, 1950, the punishment of “severe reprimand” shall be deemed to be a punishment and fall under the category of “service matter” as defined by*

Section 3 of the Act and can be impugned before the Armed Forces Tribunal in pursuance to the provisions contained in the Act.

With great respect, we are not in agreement with the interpretation given by the Armed Forces Tribunal, Principal Bench, Delhi for the reasons assigned hereinabove. Let the records be remitted back to the Regional Bench of Armed Forces Tribunal, Lucknow within two weeks from today to decide the petition on merit, expeditiously, say within a period of three months from the date of production of a certified copy of the present order/judgment.

Issue raised is decided accordingly.

Let a copy of the Judgment be sent to the Chairman, Principal Bench, Armed Forces Tribunal, New Delhi within two weeks.”

15. In view of the principles of law laid down by the Division Bench of the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow it is clear that the punishment of "Severe Reprimand" also comes within the purview of the 'service matters' as defined in Section 3(o) of the Armed Forces Tribunal Act, 2007 and the Armed Forces Tribunal has jurisdiction to adjudicate such controversy. Since the controversy involved, has been set at rest by the Division Bench of the Hon'ble High Court, we do not think it necessary to consider the other points raised on behalf of the parties.

16. Relying upon the Judgment dated 20.02.2014, passed by the Division Bench of the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Writ Petition No.8051 of 1989, Major Kunwar Ambreshwar Singh Versus The Union of India, we hold that the punishment of "Severe Reprimand" awarded in summary trial comes within the purview of the 'service matters' as defined in Section 3(o) of the Armed Forces Tribunal Act, 2007 and this Tribunal has jurisdiction to adjudicate the controversy involved in the instant case.

(Air Marshal Anil Chopra)
Member (A)

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

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