

**Form No. 4**  
**{See rule 11(1)}**  
**ORDER SHEET**  
**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**  
**Court No.1**

**O.A. No. 477 of 2018**

**Major Munish Verma**  
By Legal Practitioner for the Applicant

Applicant

**Versus**

**Union of India & Others**  
By Legal Practitioner for Respondents

Respondents

<b>Notes of the Registry</b>	<b>Orders of the Tribunal</b>
	<p><b><u>01.04.2019</u></b> <b><u>Hon'ble Mr. Justice S.V.S. Rathore, Member (J)</u></b> <b><u>Hon'ble Air Marshal B.B.P. Sinha, Member (A)</u></b></p> <p>Today the case is listed for hearing.</p> <p>On behalf of the respondents, a preliminary objection has been raised with regard to maintainability of the case before this Tribunal. It is submitted by learned counsel for the respondents that the applicant was awarded punishment of only 'SEVERE REPRIMAND' by summary trial. It is further submitted that in view of Section 3 (o) of the Armed Forces Tribunal Act, 2007 only such Summary Trial cases can be entertained by the Armed Forces Tribunals where punishment of "dismissal" is awarded. Learned counsel for the applicant submits that in similar circumstances the Principal Bench of the Armed Forces Tribunal, New Delhi in MA. No. 149 of 2015 <i>Union of India vs. IC 46298N Lt Col Mukul Dev</i> along with connected matter vide order dated 12.03.2015, has granted leave to appeal by forming the following question of general public importance:-</p> <p style="text-align: center;"><i>"whether the Armed Forces Tribunal has jurisdiction to deal with the matter arising from a order passed in summary trial where the punishment of dismissal is not awarded despite the fact the Armed Forces Tribunal, 2007 itself has provision in the form of Section 3(o)(iii) specifically excluding the Tribunal's jurisdiction over such a matters."</i></p> <p>Further, it is submitted that in pursuance of the aforesaid leave, appeal has been preferred by the Union of India wherein by order dated 18.09.2017, Hon'ble Apex Court in Diary NO. 12663 of 2017 <b><i>Union of India &amp; ors v s. IC 4629N Col Kumul Dev on 19.09.2017</i></b> has condoned the delay and has issued notices to the respondents.</p> <p>In this background, it is submitted by learned counsel for the</p>

respondents that it would be appropriate that this Tribunal may wait for the outcome of the decision of the Hon'ble Apex in aforesaid case since the question involved is with regard to jurisdiction of this Tribunal to entertain this case.

Learned counsel for the applicant has vehemently tried to impress the Tribunal that the case should be heard and disposed of by this Tribunal. Alternatively, he has also submitted that case may be dismissed with liberty to file afresh before Hon'ble High Court. He further submitted that the applicant a short service commission officer and will be considered for permanent commission and if this Tribunal considers it appropriate, then the permanent commission of the applicant may be made subject to final outcome of the present case.

We have heard learned counsels for the parties and we find substance in the submission of learned counsel for the respondents that it would be appropriate to wait for the decision of the case pending in the Hon'ble Apex Court where similar point is under consideration before their Lordships in aforementioned case. We do not find any substance in the submission of learned counsel for the applicant that this O.A. may be permitted to be dismissed as withdrawn with liberty to file a fresh writ petition before the Hon'ble High Court. Such an order can be passed only when it is decided that this Tribunal has no jurisdiction to proceed with the case while such issue is pending before the Hon'ble Apex Court for consideration. Therefore, we are of the considered opinion that it would be in the interest of justice that the hearing of the present O.A. be postponed awaiting decision of Hon'ble Apex Court.

Let the case be listed on 30.07.2019 for hearing.

Meanwhile, it is directed that outcome of the promotion board of the applicant, if any, will be subject to final outcome of this case.

**(Air Marshal B.B.P. Sinha)**  
**Member (A)**

**(Justice S.V.S. Rathore)**  
**Member (J)**

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