

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

Court No. 2 (Sl. No. 13)

O.A. No. 1127 of 2022 with M.A. No. 1348 of 2022

Ex Sub Maj Anil Kumar

Applicant

By Legal Practitioner for the Applicant : Shri Veer Raghav Chaubey, Advocate

Versus

Union of India & Others

Respondents

By Legal Practitioner for Respondents: Dr. Shailednra Sharma Atal, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><u>20.02.2024</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></p> <p>1. On the case being taken up for hearing, Shri Veer Raghav Chaubey, learned counsel for the applicant and Dr. Shailendra Sharma Atal, learned counsel for the respondents are present.</p> <p>2. This O.A. has been filed on behalf of the applicant for following reliefs:- (i) This Hon'ble Tribunal may set aside the punishment order dated 29.06.2022 contained in annexure No 5 and Honorary Lieutenant to be restored or promoted and give pensionary benefits accordingly. (ii) This Hon'ble Tribunal may direct the opposite parties to decide the notice/representations dated 14.07.2022 and 20.07.2022 contained in annexure No 2 to this application. (III) Pass any other order or direction which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.</p> <p>3. By order dated 29.06.2022 passed in summary trial, the applicant has been awarded punishment of severe reprimand.</p> <p>4. Respondents have filed written objection on maintainability of this O.A. in which it is stated that this O.A. is not maintainable in view of the law laid down by the AFT (PB), New Delhi in the case of <i>Dfr Shatrughan Singh Tomar vs UOI & Ors</i>, O.A. No. 665 of 2020 decided on 07.04.2021. It is also submitted that the prayer of the applicant does not fall within the definition of service matters as contemplated under Section 3 (o) of the Armed Forces Tribunal Act, 2007.</p> <p>5. Learned counsel for the respondents further submitted that decision of <i>Major Kunwar Ambreshwar Singh</i> (supra) is not applicable in the facts and circumstances of this case as the decision of <i>Major Kunwar Ambreshwar Singh</i> (supra) has been distinguished by the Principal Bench of AFT, New Delhi in the case of <i>Dfr Shatrughan Singh Tomar</i> (supra).</p>

6. Reply has been filed by the applicant which is taken on record. In his reply it is submitted by the applicant that the O.A. is maintainable in view of order dated 30.11.2023 passed by the Hon'ble High Court of Judicature at Allahabad in Writ Petition No 8782 of 2022, **Ls Gi (S) Abhishek Kumar vs Union of India through Secy, Ministry of Defence (Navy), New Delhi & Ors.** It is also submitted that in **Ls Gi (S) Abhishek Kumar** (supra) reliance has been placed on Hon'ble Allahabad High Court, Lucknow Bench order dated 20.02.2014 passed in the case of **Major Kunwar Ambreshwar Singh**, (2014) 5 ALJ 156.

7. Heard learned counsel for the parties and perused the record.

8. Question raised by the learned counsel for the respondents seems to be no more res integra in view of Division Bench of Allahabad High Court at Lucknow vide judgment and order dated 20.02.2014 passed in Writ Petition No. 8051/89, **Major Kunwar Ambreshwar Singh** (supra) in which it has been held that punishment of severe reprimand may be impugned before the Tribunal being service matter. Relevant Paras 26 and 27 of the aforesaid judgment, for convenience sake, are reproduced as under :-

“26. The punishment of “severe reprimand” affects 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 the 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.”

9. In view of the decision of Hon'ble High Court, Lucknow Bench in **Ls Gi (S) Abhishek Kumar** (supra), punishment of 'severe reprimand' being service matter in terms of Section 3 (o) (iv) of the AFT Act, 2007 is challengeable before AFT. For convenience sake, relevant Para 29 of the above judgment is reproduced as under:-

“29. Since Section 3 (o) of the Act, 2007 clearly says that all matters relating to the conditions of service would be construed as “service matter”, in order to give a harmonious and purposive interpretation of Section 3 (o) (iii) of the Act, 2007, it has to be construed that all summary disposal and trial would be a service matter including where the punishment of dismissal is awarded. This Court finds that the said harmonious interpretation is supported by the next clause 3 (o) (iv) of the Act, 2007, which is a residual clause as it encompasses within it all service conditions by using the phrase “any other matter, whatsoever”. The use of the said phrase by the legislature is not accidental but is indicative of the fact that the legislature in its wisdom was although not able to foresee and enumerate all the incidences of service conditions, but inserted and enacted the residual clause to include all incidence of service by using the phrase “any other matter, whatsoever” in clause (iv) of Section 3 (o) of the Act, 2007. Thus,

the legislature always intended to include all the incidences of service conditions to be service matter, so as to be amenable to the Tribunal, keeping in mind the larger objective for which these Tribunals were constituted. However, there is a caveat, in the sense that the latter part of Section 3 (o) of the Act, 2007 says that certain matter would not be included in the service matter, wherein it enumerates four sub-clauses namely (i) certain orders issued under Section 18 of Army Act, Section 15 of the Navy Act and Section 18 of the Air Force Act, (ii) Transfer & posting under the said three acts, (iii) leave of any kind and (iv) summary court martial, except where the punishment is of dismissal or imprisonment for more than three months.”

10. Additionally, order dated 20.02.2014 passed in **Major Kunwar Ambreshwar Singh** (supra) was challenged before the Hon'ble Apex Court by filing Civil Appeal Diary No 17682 of 2018 and this appeal was dismissed by order dated 03.08.2018, therefore, order dated 20.02.2014 passed by Hon'ble Allahabad High Court at Lucknow Bench has attained finality.

11. Thus, in view of the law laid down by Hon'ble Allahabad High Court at Lucknow Bench and upheld by the Hon'ble Apex Court, objection raised on behalf of the respondents is not sustainable. The punishment of “severe reprimand” falls in the category of “any other matter, whatsoever” which is mentioned in clause 3 (o) (iv) and it can be challenged before this Tribunal.

12. In view of the above, the present O.A. is maintainable.

13. List on **03.05.2024** for orders.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Anil Kumar)
Member (J)

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