

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

Court No. 2 (Ser No. 21)

O.A. (A) No. 1391 of 2023

Abhay Datt Tripathi Appellant
By Legal Practitioner for the Appellant : Shri Ravi Kumar Yadav and Shri Saurabh Yadav, Advocates

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents: Shri Asheesh Agnihotri, Advocate

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| Notes of the Registry | Orders of the Tribunal |
| | <p><u>26.07.2024</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 Ravi Kumar Yadav, Ld. Counsel for the appellant is present in Court and Shri Asheesh Agnihotri, Ld. counsel for the respondents is present through virtual mode.</p> <p>2. Objection raised by the respondents on maintainability of this case and its reply filed on behalf of the appellant are on record.</p> <p>3. Submission of learned counsel for the respondents is that this O.A. (A) is not maintainable as appellant has not availed alternative remedy as provided under Section 164 (2) of the Army Act, 1950.</p> <p>4. On the other hand, submission of learned counsel for the appellant is that this case is maintainable in view of order dated 19.10.2010 passed by Larger Bench AFT (PB), New Delhi in O.A. No. 471 of 2010, <i>Ex Hav Parmeshwar Ram vs Union of India & Others.</i></p> <p>5. Heard learned counsel for the parties and perused the record.</p> <p>6. We have given our anxious consideration to the rival submission of both the parties and we find that Section 15 has the overriding effect to Section 164 of the Army Act, 1950 as held by Larger Bench AFT (PB), New Delhi in order dated 19.10.2010. For convenience sake, Para 39 (2) of the aforesaid order is reproduced as under:-</p> <p style="text-align: center;"><i>“39 (2). The power u/s 15 of the Tribunal is not dependent on the statutory representation u/s 164 (2) of the Army Act, 1950. It is independent adjudicatory power and appeal against the order passed by the Court Martial or any connected therewith will be maintainable.”</i></p> |

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| | <p>7. In view of the above, objection raised by the respondents is overruled.</p> <p>8. This O.A. (A) has been filed challenging DCM proceedings and findings of sentence dated 27.02.2023 passed by the DCM. Matter needs adjudication.</p> <p>9. Admit.</p> <p>10. Learned counsel for the respondents prays for and is allowed four weeks time to file counter affidavit. Rejoinder affidavit, if any, may be filed within two weeks thereafter.</p> <p>11. List on 07.10.2024.</p> <div><div><p>(Maj Gen Sanjay Singh) Member (A)</p><p><i>rathore</i></p></div><div><p>(Justice Anil Kumar) Member (J)</p></div></div> |
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