

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

O.A. No. 480 of 2021 with M.A. No 500 of 2021

Ex L Hav Uday Bhan Singh Yadav
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>29.10.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p style="text-align: center;">Heard Shri VP Pandey, learned counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents.</p> <p style="text-align: center;">This application has been filed against the order dated 18.12.2011 of respondent No 2 passed in Summary Court Martial proceedings whereby punishment of severe reprimand has been awarded to the applicant.</p> <p style="text-align: center;">A legal objection has been raised by learned counsel for the respondents regarding maintainability of the O.A. saying order of punishment of severe reprimand awarded in Summary Court Martial being not fallen within the ambit of "service matters" as defined in Section 3 (o) of Armed Forces Tribunal Act (in short 'the Act'), the same is not cognizable by the Armed Forces Tribunal.</p> <p style="text-align: center;">Learned counsel for the respondents has placed reliance on the judgment of AFT (PB), New Delhi in <i>O.A. No 665 of 2020, Dfr Shatrughan Singh Tomar, Vs Union of India</i>, decided on 07 April, 2021, whereby the AFT (PB) has held that punishment of severe reprimand awarded by Summary Court Martial being not included in definition of "service matters" as defined in Section 3 (o) of the Act is not cognizable by the Armed Forces Tribunal. The AFT (PB) while making this observation has also said that order of the Hon'ble Allahabad High Court in <i>Writ Petition No 8051 of 1989, Major Kunwar Ambreshwar Singh Versus Union of India</i>, decided on 20.02.2014 does</p>

not lay the correct proposition of law regarding cognizability of the application filed in the AFT against the order of severe reprimand. The AFT (PB) has also said that law laid down in the case bearing **O.A. No 130 of 2010, titled Hav Shambhu Kumar Vs. Union of India & Ors**, decided on 12.12.2014 is not applicable in the matter of severe reprimand.

In reply, learned counsel for the applicant submitted that Hon'ble Uttarakhand High Court in **Writ Petition No 756 (PIL) of 2008, Lalit Kumar vs Union of India and others**, decided on 14.12.2010 has held that application filed against the order of severe reprimand in Summary Court Martial proceedings is cognizable under Section 14 of the Act.

Learned counsel for the applicant has further relied on the judgment of the Hon'ble Apex Court in Civil Appeal Diary No 17682 of 2018, titled **Union of India and Others Vs Maj Kunwar Ambreshwar Singh**, decided on 03.08.2018. This Civil Appeal was filed against the order dated 20.02.2014 of Hon'ble Allahabad High Court in the case of **Major Kunwar Ambreshwar Singh** and was dismissed whereby order of the Hon'ble Allahabad High Court has become final.

He has further placed reliance on the judgment of this Tribunal passed in **T.A. No 49 of 2012, Laxman Singh Vs Union of India & Others**, decided on 02.05.2014 wherein order of severe reprimand in Summary Court Martial has been held to be cognizable by the Armed Forces Tribunal.

We have gone through the aforesaid submissions of leaned counsel of the parties and also the definition of service matters given in Section 3 (o) of the Act. Section 3(o) of the Act which reads as under:

(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;

From the above, it is clear that punishment of severe reprimand awarded in Summary Court Martial proceedings is not included in service matters as defined in Section 3 (o) of the Act and is therefore not cognizable by the Armed Forces Tribunal.

The AFT (PB) in the case referred to above (***Dfr Shatrughan Singh Tomar*** (supra), after considering the definition of “service matters” as given in Section 3 (o) of the Act as well as judgments relied upon by learned counsel for the applicant has held that order of Severe Reprimand is not included in service matters and is therefore not cognizable by the Armed Forces Tribunal. We are in full agreement with the view of Principal Bench in the matter of severe reprimand passed in Summary Court Martial Proceedings and, therefore, we also hold that application filed against the order of severe reprimand awarded by Summary Court Martial is not included in service matters as defined in Section 3 (o) of the Act and is, therefore, not cognizable by the Armed Forces Tribunal.

In view of above, the present Original Application being filed against the order of severe reprimand passed in Summary Court Martial proceedings is also not maintainable in the Tribunal and is, therefore, **dismissed** as such.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)