

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

O.A. No. 321 of 2016

K.K. Pandey
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>07.02.2022</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>Heard Shri V.K. Pandey, Ld. Counsel for the applicant and Shri Asheesh Agnihotri, Ld. Counsel for the respondents.</p> <p>This Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-</p> <p>(i) <i>That this Hon'ble Tribunal may kindly be pleased to quash the impugned severe reprimand dated 16.03.2006 after summoning the same, passed by the opposite party no. 5.</i></p> <p>(ii) <i>That this Hon'ble Tribunal may kindly be pleased to direct the opposite parties to provide the entire service benefits to the applicant from 16.03.2006 to actual date of payment and also onwards, and provide the interest on the aforesaid delayed amount with 18% p.a. since due date to actual date of payment.</i></p> <p>(iii) <i>That this Hon'ble Tribunal may be pleased to pass any other order or direction which this Hon'ble Court may deem just and proper be passed in favour of the applicant.</i></p> <p>(iv) <i>That this Hon'ble Tribunal may be pleased to award the cost of this original application and legal expenses Rs. 10,000/- (ten thousand) and allow the same."</i></p> <p>Brief facts of the case are that applicant was enrolled in the Army on 27.11.1986 and was discharged from service on 31.12.2007. The applicant while serving with 16 Infantry Division Ordnance Unit earned 1st punishment of Severe Reprimand on 25.08.05 under Army Act Section 63 and 2nd punishment of Severe Reprimand and 7 days pay fine on 16.03.2006 under Army Action Section 63 for violation of good order & military discipline and under Section 39(b) for absenting himself without leave. The applicant being placed in permanent low medical category was discharged from service w.e.f. 31.12.2007 under Rule 13(3) III (v) of Army Rules, 1954. Thereafter, in compliance of Hon'ble Delhi High Court's order dated 20.11.2008, option letter was issued to the applicant to rejoin service after depositing all terminal</p> |

benefits paid to him at the time of discharge within 30 days of receipt of option letter. The applicant neither rejoined back for duties nor deposited any amount rather filed a Civil Misc. Writ Petition No. 25248/2009 before Allahabad High Court to quash Army Ordnance Corps Records letter dated 09.01.2009. The said Writ Petition was dismissed by the Allahabad High Court vide order dated 04.08.2010 for want of prosecution. The ibid Writ Petition was restored and was dismissed again vide order dated 02.09.2015. Being aggrieved, the applicant has filed the present Original Application to quash the order of Severe Reprimand in summary trial awarded by the respondent No. 5.

The respondents in their counter affidavit have submitted that applicant while serving with 16 Infantry DOU was involved in a quarrel with L/Nk Pawan Kumar of the same unit and beat him with a stick on 12.02.2006. The offence committed by the applicant was duly investigated by 16 Infantry Division Provost Unit in which it was found that applicant absented himself without leave from 176 Military Hospital. Army Rule 22, 34(1) and para 387 and 402 of Regulations for the Army, 1987 were duly complied with while carrying out summary trial of the applicant. Accordingly, applicant was punished with Severe Reprimand and 7 days pay fine for his offences committed under Section 63 for violation of good & military discipline and under Section 39(b) for absenting himself without leave. The applicant being placed in permanent low medical category was discharged from service w.e.f. 31.12.2007 under Rule 13(3) III (v) of Army Rules, 1954 and not due to punishment of Severe Reprimand awarded to him under Section 63.

Today, during the course of hearing, a preliminary objection has been raised by the learned counsel for the respondents inter alia on the ground that punishment awarded against applicant in summary trial being less than a dismissal or imprisonment of a period of three months is not included in purview of 'service matters' defined in Section 3(o) of the Armed Forces Tribunal Act, 2007. He further submits that an application in regard to service matters is maintainable in Armed Forces Tribunal only if it is included in definition of service matters given in Section 3(o) of the Act not otherwise. He further submits that punishment of Severe Reprimand and 7 days pay fine being excluded from the definition of service matters, therefore, application filed against the same is not maintainable in the Tribunal.

In support of aforesaid submission, learned counsel has placed reliance on the judgment of Armed Forces Tribunal (Principal Bench), New Delhi in O.A. No. 665 of 2020 in the matter of **Dfr Shatrughan Singh Tomar vs. Union of India and Ors**, decided on 07.04.2021. In this case, the Principal Bench after considering the judgment of the Allahabad High Court in the case of **Major Kunwar Ambreshwar Singh vs. Union of India** [2015 (3) SLR 595] and many other judgments delivered by the various Benches has held that order of Severe Reprimand in summary trial is excluded from the definition of service

matters in Section 3(o) of the Armed Forces Tribunal Act, 2007, therefore, application against the said punishment is not cognisable by Armed Forces Tribunal.

In reply, the learned counsel for the applicant submits that this Bench as well as other Benches of the Armed Forces Tribunal has held in number of cases that order of Severe Reprimand awarded in summary trial or summary disposal being included in any other matter under Section 3(o) (iv) is cognisable by Armed Forces Tribunal. Therefore, the Original Application filed by the applicant against the punishment of Severe Reprimand is maintainable before this Tribunal.

The “service matters” as defined in Section 3(o) of the Armed Forces Tribunal Act, 2007, in so far as it is relevant for the instant case, 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 of 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;”*

Armed Forces Tribunal (Principal Bench), New Delhi in the matter of **Dfr Shatrughan Singh Tomar** (supra) has considered the issue at length whether order of Severe Reprimand in summary trial/summary disposal is cognisable by the Armed Forces Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 and has held that this being excluded in definition of service matters of the Section 3(o) of the Act is not cognizable by the Tribunal. While coming to this conclusion the Principal Bench has analysed various judgments rendered by the various Benches as well as judgment of the Allahabad High Court in the case of **Major Kunwar Ambreshwar Singh** (supra) and has held that service disputes or the matters stipulated in the ‘inclusion clause’ and ‘any other matter, whatsoever’ not contemplated therein come in the inclusion clause, but

thereafter certain items mentioned from sub-clauses (i), (ii), (iii) to (iv) of the exclusion clause are taken away or excluded from the definition of 'service matters', that is they are beyond the jurisdiction of the Armed Forces Tribunal and one of the items excluded is 'all punishment imposed after Summary Court Martial except dismissal or imprisonment for more than three months'. The Principal Bench finally opined that order of Severe Reprimand being excluded in the definition of service matters under Section 3(o) of Armed Forces Tribunal Act, 2007, application against the same is not maintainable in Armed Forces Tribunal.

We are in agreement with the judgment of the Principal Bench and are of the view that order of Severe Reprimand in summary trial / summary disposal being excluded from the definition of service matters defined in Section 3(o) of the Armed Forces Tribunal Act, 2007, does not fall within the purview of 'service matters' and therefore, the same is not cognisable in Armed Forces Tribunal.

In view of the aforesaid, Original Application is **dismissed** with liberty to applicant to take recourse of such remedy as may be permissible under law with regard to the issue in question.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

SB