

COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 665 of 2020

In the matter of :

Dfr Shatrughan Singh Tomar **... Applicant**

Versus

Union of India & Ors. **... Respondents**

For Applicant : Shri V.S. Kadian with Shri Pardeep Singh
Nandal, Advocates

For Respondents : Shri Ashok Chaitanya, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'the AFT Act'), this application has been filed for quashing the punishment order dated 23.09.2019, vide which, on the basis of a summary trial held, punishment of 'Severe Reprimand and 07 days pay fine' has been imposed. The applicant wants the aforesaid punishment to be quashed and thereafter his case for promotion be considered.

2. A preliminary objection has been raised by the respondents to say that the grievance raised by the applicant in this application and the relief claimed for, do not fall within the purview of 'service matters' as defined in Section 3(o) of the AFT

Act. It comes with the 'exclusion clause' as contemplated in the definition i.e. in the clause of : ***'all cases arising out of Summary Court Martial except where the punishment is of dismissal or imprisonment for more than three months'***, it is said that all summary disposal and trial matters within the purview of the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950 are not service matters and, therefore, the Tribunal does not have jurisdiction to deal with the issue in question.

3. We have heard learned counsel for the parties on this issue and by this order, we will decide the preliminary issue with regard to maintainability of the application.

4. Before advertent to consider the said issue, we may take note of the material facts. The applicant was enrolled in the Army on 28.04.1997 and is said to have rendered 22 years of exceptional service. Applicant is presently holding the rank of Havildar and according to him, he is due for promotion to the rank of 'Naib Subedar', having passed all the educational/technical qualifications including the Promotion Cadre. Records indicate that the applicant was involved in some disciplinary matter and after summary trial held, he has been punished with 'Severe Reprimand' on account of the fact

that he was found intoxicated while on duty and certain other allegations were levelled against him.

5. According to the respondents, as the punishment in question falls within the 'exclusion clause' as contained in Section 3(o) of the AFT Act, this Tribunal has no jurisdiction to deal with the matter.

6. Learned counsel for the applicant argued that, by virtue of judgment dated 20.02.2014 passed by the Allahabad High Court in the case of **Major Kunwar Ambreshwar Singh Vs. Union of India [2015 (3) SLR 595]**, this Tribunal has jurisdiction in the matter. He invited our attention to Para 23 onwards of the aforesaid judgment, wherein the Allahabad High Court has interpreted the provisions of Section 3(o) of the AFT Act and recorded the following findings :

“23. In view of above, while interpreting the provisions contained in Section 3(o) of the Act, the provisions contained in Clause (iv) containing the words, ‘any other matter, whatsoever,” cannot be excluded. In case these words are not taken into account, it shall make Clause (iv) redundant which is not permissible under Interpretative jurisprudence.

24. Learned counsel for the petitioner further invited attention to Section 84 of the Army Act, 1950, under which the punishment of severe reprimand has been

provided. For convenience, Section 84 of the Army Act is reproduced as under :

“84. Punishment of officers, junior commissioned officers and warrant officers by area commanders and others :- An officer having power not less than an area commander or an equivalent commander or an officer empowered to convene a general Court-martial or such other officer as is, with the consent of the Central Government, specified by [the Chief of the Army Staff] may, in the prescribed manner, proceed against an officer below the rank of lieutenant-colonel, a junior commissioned officer or a warrant officer, who is charged with an offence under this Act, and award one or more of the following punishments, that is to say—

(a) forfeiture of seniority, or in the case of any of them whose promotion depends upon length of service, forfeiture of service for the purpose of promotion for a period not exceeding twelve months, but subject to the right of the accused previous to the award

to elect to be tried by a Court-martial;

(b) severe reprimand or reprimand;

(c) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.”

25. *A plain reading of the aforesaid provision reveals that it is not covered by the exception provided under Clause (iv) of subsection (o) of Section 3 of the Act. Accordingly, it was not open for the Armed Forces Tribunal to remand back the case to the High Court. The tribunal has failed to exercise jurisdiction vested in it. The jurisdiction conferred by the statute cannot be diluted or interpreted otherwise by applying the principle of reading down. In case the order of the Principal Bench of Armed Forces Tribunal, New Delhi is upheld, it shall amount to supply of cautious omissus to Section 3 of the Act and deprive the right of army personnel to approach the tribunal for expeditious disposal of a dispute relating to the punishment awarded to them.*

26. *The punishment of ‘severe reprimand’ affect 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.”

[Emphasis supplied]

7. Learned counsel submitted that this judgment has been followed by certain Regional Benches of the Tribunal, particularly in the case of ***Mr. T.A. Bijoy Vs. Union of India & Ors. [O.A. No. 215 of 2013]*** decided on 21.11.2014, and argued that the application is maintainable as in both the cases which were considered by the Allahabad High Court in *Major Kunwar Ambreshwar Singh (supra)* so also by the Regional Bench, Kochi in the case of *T.A. Bijoy (supra)*, punishment of ‘severe reprimand’ was imposed after the summary trial was held. Similarly, reference is also made to an order dated 03.01.2011 passed by the Principal Bench of this Tribunal in the case of ***Hav. Shambhu Kumar Vs. Union of India & Ors. [O.A. No. 130 of 2010]***, and another order dated 12.12.2014 passed by the Regional Bench, Kochi in the case of ***Hav/Clk Sudheer Ex. No. 15361526N [O.A. No. 19 of 2013]***, and also order dated 02.05.2014 passed by the Regional Bench, Lucknow in ***Laxman Singh Vs. Union of India & Ors. [Transferred Application No. 49 of 2012]***.

8. It is pointed out that in all these cases, punishment of ‘severe reprimand’ awarded has been interfered with and primarily, in all these cases, we find that reliance has been

placed on the judgment of the Allahabad High Court in the case of *Major Kunwar Ambreshwar Singh (supra)*. Learned counsel emphasised that once in the similar circumstances in all these cases, the punishment of 'severe reprimand' has been interfered with by various Benches of the Tribunal, primarily on merits, the objection now raised is unsustainable and is liable to be rejected.

9. Refuting the aforesaid contentions, learned counsel for the respondents, invited our attention to the definition of '**service matters**' as contained in Section 3(o) of the AFT Act and argued that any punishment other than dismissal or three months' imprisonment imposed cannot be subjected to the jurisdiction of this Tribunal. Learned counsel argued that Allahabad High Court, in the case of *Major Kunwar Ambreshwar Singh (supra)*, has not laid down the correct principle of law. The interpretation given by the Allahabad High Court is contrary to the legislative intent and the definition of 'service matters' as contained in Section 3(o) of the Act and, therefore, is liable to be rejected.

10. Learned counsel for the respondents relied upon the following orders passed by the Principal Bench as well as Regional Benches of the Tribunal to canvass the contention that the application is not maintainable :

1. **Nk/Dvr Shiv Bahadur Vs. Union of India & Others** [Order dated 10.03.2010 passed by the AFT, Principal Bench, New Delhi in O.A. No. 137 of 2010]
2. **Ex-Hav/Clk Jayanta Boruah Vs. The Union of India & Ors.** [Judgment dated 11.02.2016 passed by the AFT, Regional Bench, Guwahati in O.A. No. 05 of 2016]
3. **Hav/Clk Ram Shankar Singh Vs. Union of India & Ors.** [Order dated 04.07.2018 passed by the AFT, Regional Bench, Lucknow in Dy. No. 1649 of 2018 In re. O.A. No. Nil of 2018]

Learned counsel also relied upon a judgment of Allahabad High Court in the case of **Surendra Bahadur Singh Vs. Armed Forces Tribunal, Regional Bench, Lucknow & Ors.** [Civil Misc. Writ Petition No. 69145 of 2011] [2012 SCC ***OnLine All 296***] to say that in that case, it has been held that the matter governed by the 'exempted clause' in Section 3(o) of the AFT Act can be adjudicated upon in the proceedings under Article 226 of the Constitution of India and the jurisdiction of the Armed Forces Tribunal in such cases are excluded.

11. We have heard the learned counsel for the parties at length and have also considered the submissions made by them.

12. Before advertent to consider the rival contentions, it may be appropriate to take note of the scheme of the Armed Forces Tribunal Act, 2007 and the various provisions as contemplated therein to evaluate the legislative intent and

other aspects of the matter. The AFT Act is an enactment providing for the adjudication or trial by the Armed Forces Tribunal of disputes or complaints with respect to the commission, appointments, enrolments and conditions of service in respect of persons, subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950 so also to provide for appeals arising out of orders, findings or sentences of court martial held under the aforesaid three Acts. Section 2 of the Act contemplates a provision with regard to applicability of the Act and Section 14 provides for jurisdiction of the Armed Forces Tribunal. Section 15 confers certain appellate jurisdiction on the Tribunal with regard to certain class of matters wherein, based on the Court Martial, punishments are imposed. However, 'service matters' is defined under Section 3(o) of the AFT Act and the same reads as under :

“Sec. 3. Definitions.—In this Act, unless the context otherwise requires,—

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(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), subsection (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.”**

13. A perusal of the definition of ‘service matters’ clearly contemplates that a service matter in relation to a person who

is subjected to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950 mean all matters relating to the conditions of their service and includes the specific disputes contemplated under sub-clauses (i), (ii), (iii) and (iv), as detailed hereinabove. Thereafter, there is an 'exclusion clause' which takes away items mentioned at sub-clauses (i), (ii), (iii) and (iv) out of the purview of the service matters. Accordingly, a perusal of the definition of 'service matters' indicates that it has an 'inclusion clause', which includes certain matters, which are included within the definition of the 'service matters' and thereafter proceeds to exclude certain matters from the purview of 'service matters'. However, very interestingly, in the inclusions clause, sub-clause (iv) reads as under :

“any other matter, whatsoever”

It is this phrase 'any other matter, whatsoever' which has been taken note of by the Allahabad High Court in the judgment rendered in the case of *Maj Kunwar Ambreshwar Singh (supra)*, as detailed hereinabove. In Para 23 thereof, the finding recorded is that 'any other matter, whatsoever' is connected with the service dispute and falls within the purview of this definition, else this clause would become redundant. We, with great respect, would want to disagree with this finding recorded by the Allahabad High Court in Para

23 for the reasons which we are proposing elaborately to deal with hereinunder.

15. Before doing so, we may take note of certain cardinal principles, which govern the jurisprudence of the interpretation of the Statute and for the same, we would refer to the 'Principles of Statutory Interpretation' by Hon'ble Justice G.P. Singh (13th Edition). It is the basic principle of interpretation of Statute that the Statute is to be construed according to the intent for which it has been enacted and it is the duty of every adjudicating Court, Tribunal or Authority to act upon in furtherance to the true intention of the Legislature. In fact, the object of interpretation of Statute is to ascertain the intention of the Legislature communicating it and advance the cause of such intention. Meaning of the words used by the Legislature should be objectively determined in a legal manner or true manner of the words should be given effect to in a precise manner in which it has been used in the enactment. That apart, the Legislative intent has to be derived and has to be found out by reading the Statute as a whole. The provisions or words cannot be interpreted by ignoring certain parts of the Statute or words, and while interpreting the provisions, the scheme, for which the law has been brought into force, should be given effect to. In the case of **O.P. Singla Vs. Union of India [(1984) 4 SCC**

450], Hon'ble Justice Y. Chandrachud, the then Chief Justice of India, observed and we quote as under :

“One must have regard to the scheme of the fasciculus of the relevant rules or sections in order to determine the true meaning of any one or more of them. An isolated consideration of the provision leads to the risk of some other inter-related provisions becoming otiose or devoid of meaning.”

[Emphasis supplied]

16. Similarly, when the words of Statute are clear, plain or unambiguous i.e. they are reasonably susceptible to only one meaning, the Court is bound to give effect to that meaning, irrespective of its consequences. (***Nelson Motis Vs. Union Of India And Another [AIR 1992 SC 1981]***)

17. That apart, while interpreting a provision or Statute affecting jurisdiction of courts, their exclusions or inclusions, their extent should be understood in a manner as is explicitly expressed by the law-maker and clearly implied from their intention. All exclusions must either be explicitly expressed or clearly implied. The definition of ‘service matters’, if we analyse in the backdrop of the aforesaid principles of statutory provisions, would clearly show that in relation to persons subject to the Army Act, 1950, the Navy Act, 1957 and the Air

Force Act, 1950, all matters relating to their conditions of service are brought within the purview of 'service matters' and Section 3(o) of the AFT Act clearly indicates that the 'service matters' shall include (inclusion clause) the items enumerated in sub-clauses (i), (ii) and (iii). Thereafter, clause (iv) speaks about 'any other matter, whatsoever'. As far as sub-clause (iii) is concerned, summary disposal and trials where the punishment of dismissal is awarded' are specifically included in the definition of 'service matters', but all other punishments imposed after summary disposal or trials are excluded, from this cause. However, if clause (iv) is read, as has been held by the Allahabad High Court in the case of *Major Kunwar Ambreshwar Singh (supra)*, '**any other matter, whatsoever**' would include all service matters contemplated in the Statutes like the Army Act, the Navy Act and the Air Force Act. However, immediately after specifically providing for certain items in the inclusive clause, the Legislature lays down in explicit term certain exclusions from the first part of the definition i.e. inclusive clause, and what are excluded are the items contemplated under sub-clauses (i), (ii), (iii) and (iv) of the exclusion clause. In our considered view, the Allahabad High Court, with all due respect, has taken note of the 'inclusion clause' but has very conveniently ignored the 'exclusion clause'. When the Legislative intent and the scheme

of the Statute is to be interpreted and implemented, the entire definition clause has to be seen i.e. both the inclusion clause and exclusion clause have to be taken note of and its effect given to the definition in furtherance to the Legislative intent, accordingly when we do so, we find 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*'.

18. That being so, we are of the considered view that the Allahabad High Court in the case of *Major Kunwar Ambreshwar Singh (supra)*, while analysing the definition of 'service matters' has interpreted the legislative intent and the scope and manner of words 'service matters' in a manner which amounts to doing harm to the legislative intent by ignoring certain parts of the definition and interpreting the same, in a manner that the 'exclusion clause' contained in the definition is totally given a go-by or ignored. The definition of 'service matters' and its meaning has to be interpreted in a

harmonious manner by taking note of both the 'inclusion clause' and 'exclusion clause' and thereafter the Legislative intent derived, and if we do so, we find that items contained in the first part of the definition i.e. inclusion clause from (i) to (iii) fall within the purview of the definition of 'service matters', and thereafter 'any other matter, whatsoever' which does not find mention in the aforesaid three clauses are also included and then the Legislature goes on to exclude certain parts from the definition, which are indicated from sub-clauses (i) to (iv) of Clause (iv) of the second part i.e. exclusion clause, meaning thereby that these four items are excluded specifically and the words "any other matter, whatsoever" has to be read to mean that all matters except the exclusion clause i.e. (i) to (iv). This, in our considered view, is the only manner in which the definition of 'service matters', as is appearing in the AFT Act in Section 3(o), can be interpreted and this, in our considered view, is the only legal way of interpreting it. Accordingly, we have, with full respect to the Allahabad High Court, no hesitation in holding that the Allahabad High Court in the judgment in question rendered in the case of *Major Kunwar Ambreshwar Singh (supra)* does not lay down the correct legal principle viz. a viz. the definition of 'service matters' and we, with due respect, hold it not to be a binding precedent.

19. Having held so, we find that all the judgments relied upon by the learned counsel for the applicant rendered by the AFT, Regional Benches at Kochi and Lucknow in the cases of *T.A Bijoy, Hav. Shambhu Kumar, Hav/Clk Sudheer and Laxman Singh (supra)*, are based on the law laid down by the Allahabad High Court in the case of *Major Kunwar Ambreshwar Singh (supra)* and, therefore, cannot be relied upon and will not help the applicant.

20. That apart, as far as judgment in the case of *Hav. Shambhu Kumar (supra)* is concerned, that does not deal with the issue of jurisdiction or interpretation which is before us. It pertains to interpreting the provisions of Section 64(3) of the Army Act, 1950 and the question of punishment imposed. Therefore, the said judgment is not applicable to the present case.

21. On the contrary, in the judgments rendered by the Principal Bench and the Regional Benches of AFT, in the cases of *Nk/Dvr Shiv Bahadur, Ex-Hav/Clk Jayanta Boruah and Hav./Clk Ram Shankar Singh (supra)*, the provisions of Section 3(o) of the AFT Act have been interpreted and it has been clearly laid down that the punishments other than dismissal or imprisonment for more than three months imposed on the basis of summary court martial or summary disposal are not

within the purview of the jurisdiction available to the Armed Forces Tribunal under Section 14 of the AFT Act. In the case of *Ex-Hav/Clk Jayanta Boruah (supra)* decided by the Regional Bench, Guwahati, in Para 8, the learned Bench has interpreted the provisions in the following manner :

“8. Clause (iii) of Section 3(o) of the Armed Forces Tribunal Act, 2007, provides that the ‘service matter’ includes the summary disposal and trial where the punishment of dismissal is awarded. In the instant case vide order dated 5.8.2014 the punishment of dismissal has not been awarded. The contention of the learned Counsel for the applicant that in view of the provision contained in Section 3(o)(iv), which empowers this Tribunal to entertain an OA in respect of ‘any other matter, whatsoever’, excluding the matters specifically mentioned in sub-clauses (i), (ii), (iii) and (iv) thereof, this OA is maintainable, cannot be accepted for the simple reason that the term ‘any other matter, whatsoever’, is to be read with reference to the ‘service matter’, as defined in Section 3(o). The Tribunal cannot give an interpretation that ‘any other matter, whatsoever’, includes all the matters concerning the service despite there being a specific provision that ‘service matter’, apart from others, includes only those summary disposal and trial where the punishment of dismissal is

awarded. If a contrary interpretation is given, it would amount to extending the jurisdiction of the Tribunal beyond the 'service matter' as defined in Section 3(o) of the aforesaid Act and hence such interpretation cannot be given."

22. In our considered view, the aforesaid interpretation is in accordance to the interpretation detailed by us hereinabove and we have no hesitation in agreeing with the same. Similarly, the interpretation canvassed by the Regional Bench, Lucknow on 07.07.2018 in the case of *Hav/Clk Ram Shankar Singh (supra)* also is to the same effect and we see no reason to take a different view from the same.

23. Accordingly, in the facts and circumstances, as discussed hereinabove, we are of the considered view that the subject-matter of the dispute, canvassed by the applicant before us, does not fall within the definition of 'service matters' as contemplated under Section 3(o) and, therefore, this Tribunal lacks jurisdiction to deal with the matter.

24. The application is, therefore, dismissed with liberty to the applicant to take recourse to such remedy as may be permissible under law with regard to the issue in question.

25. With the aforesaid, OA stands disposed of. No order as to costs.

Pronounced in open Court on this 7th day of April, 2021.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

**[LT GEN P.M. HARIZ]
MEMBER (A)**

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