IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

ORIGINAL APPLICATION No. 471 of 2010

Ex-Hav. Parmeshwar Ram ...Petitioner

Versus

Union of India & others ...Respondents

For the Petitioner : Mr.S.S.Pandey, Advocate

For the Respondents: Col. (Retd.) R. Balasubramanium, Advocate

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON

HON'BLE MR. JUSTICE S.S.KULSHRESHTHA, JUDICIAL MEMBER

HON'BLE LT.GEN. M.L.NAIDU, ADMINISTRATIVE MEMBER

JUDGMENT

By Chairperson:-

1. In this reference, three questions have been referred for the larger bench of the Tribunal for answer which reads as under:

1. What is the scope of the Section 15 of the Armed Forces Tribunal Act, 2007?

2. Whether the powers of the Tribunal under Section 15 of the Act are dependent on the statutory representation under section 164(2) of the Army Act?

3. Whether the decision on the statutory representation by the competent authority would play a bar on the statutory powers conferred on the Tribunal under section 15 of the Act?

2. Before we answer this question, we may go into the background of the legislation which brought about the Armed Forces Tribunal Act, 2007. The whole exercise started with the decision of the Lordships of Supreme Court in the case of ***Lt.Col. Prithi Pal Singh Bedi Versus Union of India & Others (1982 3 SCC 140)*** wherein the Apex Court observed that :

> *A marked difference in the procedure A for trial of an offence by the criminal court and the court martial is apt to generate dissatisfaction arising out of this differential treatment. Even though it is pointed out that the procedure of trial by court martial is almost analoguous to the procedure of trial in the ordinary criminal courts, we must recall what Justice William O'Douglas observed 'that civil trial is held in an atmosphere conducive to the protection of individual rights while a military trial is marked by the age-old manifest destiny of retributive*

justice. Very expression 'court martial' generally strikes terror in the heart of the person to be tried by it. And somehow or the other the trial is looked upon with disfavour.'(1) In Reid v. Covart.(2) Justice Black observed at p. 1174 as under:

> *"Courts-martial are typically adhoc bodies appointed by a military officer from among his subordinates. They have always been subject to varying degrees of "command influence". In essence, these tribunals are simply executive tribunals whose personnel are in the executive chain of command. Frequently, the members of the court-martial must look to the appointing officer for promotions, advantageous assignments and efficiency ratings-in short, for their future progress in the service. Conceding to military personnel that high degree of honesty and sense justice which nearly all of them undoubtedly have, the members of a court-martial, in the nature of things, do not and cannot have the independence of jurors drawn from the general public or of civilian judges."*

Absence of even one appeal with power to review evidence, legal formulation, conclusion and adequacy or otherwise of punishment is a glaring lacuna in a country where a counterpart civilian convict can prefer appeal after appeal to hierarchy of courts. Submission that full review of finding and/or sentence in confirmation proceeding under section 153 is provided for is poor solace. A hierarchy of courts with appellate powers each having its own power of judicial review has of course been found to be counterproductive but the converse is equally distressing in that there is not even a single judicial review. With the expanding horizons of fair play in action even in administrative decision, the universal declaration of human rights and retributive justice being relegated to the uncivilsed days, a time has come when a step is required to be taken for at least one review and it must truly be a judicial review as and by way of appeal to a body composed of non-military personnel or civil personnel. Army is always on alert for repelling external aggression and suppressing internal disorder so that the peace loving citizens enjoy a social order based on rule of law; the same cannot be denied to the protectors of this order. And it must be realised that an appeal from Ceaser to Ceaser's wife... confirmation proceeding under section 153 has been condemned as injudicious and merely a

lip sympathy to form. The core question is whether at least there should be one appeal to a body composed of. non-military personnel and who would enjoy the right of judicial review both on law and facts as also determine the adequacy of punishment being commensurate with the gravity of the offence charged. Judicial approach by people well-versed in objective analysis of evidence trained by experience to look at facts and law objectively, fair play and justice cannot always be sacrificed at the alter of military discipline. Unjust decision would be subversive of discipline. There must be a judicious admixture of both".

"We, therefore, hope and believe that the changes all over the English speaking democracies will awaken our Parliament to the changed value system. In this behalf, we would like to draw pointed attention of the Government to the glaring anomaly that Courts Martial do not even write a brief reasoned order in support of their conclusion, even in cases in which they impose the death sentence. This must be remedied in order to ensure that a disciplined and dedicated Indian Army may not nurse a grievance that the substance of justice and fair play is denied to it."

3. In this background, the Parliament rose to the occasion and this Armed Forces Tribunal Act, 2007 Bill was introduced relying on the aforesaid decision of the Apex Court which motivated the Government to bring about this Act and this is more than obvious from the statement of object and reasons which reads as under:

1. *The existing system of administration of justice in the Army and Air Force provides for submission of statutory complaints against grievances relating to service matters and pre and post confirmation petitions to various authorities against the findings and sentences of courts-martial. In Navy, an aggrieved person has a right to submit a complaint relating to service matters and has a right of audience before the Judge Advocate General in the Navy in regard to the finding and*

sentence of a court-martial before the same are finally put up to the Chief of the Naval Staff.

2. *Having regard to the fact that a large number of cases relating to service matters of the members of the above-mentioned three armed forces of Union have been pending in the courts for a long time, the question of constituting an independent adjudicatory forum for the Defence personnel has been engaging the attention of the Central Government for quite some time. In 1982, the Supreme Court in Prithi Pal Singh Bedi v. Union of India and others (AIR 1982 SC 1413) held that the absence of even one appeal with power to rview evidence, legal formulation, conclusion and adequacy or otherwise of punishment in the laws relating to the armed forces was a distressing and glaring lacuna and urged the Government to take steps to provide for at least one judicial review in service matters. The Estimates Committee of the Parliament in their 19th Report presented to the Lok Sabha on 20th August, 1992 had desired that the Government should constitute an independent statutory Board or Tribunal for service personnel.*

3. *In view of the above, it is proposed to enact a new legislation by constituting an Armed Forces Tribunal for the adjudication of complaints and disputes regarding service matters and appeals arising out of the verdicts of the courts-martial of the members of the three services (Army, Navy and Air Force) to provide for quicker and less expensive justice to the members of the said Armed Forces of the Union.*

4. *Establishment of an independent Armed Forces Tribunal will fortify the trust and confidence amongst members of the three services in the system of dispensation of justice in relation to their service matters.*

5. *The Bill seeks to provide for a judicial appeal on points of law and facts against the verdicts of courts-martial which is a crying need of the day and lack of it has often been adversely commented upon by the Supreme Court. The Tribunal will oust the jurisdiction of all courts except the Supreme Court whereby resources of the Armed Forces in terms of manpower, material and time will be conserved besides resulting in expeditious disposal of the cases and reduction in the number of cases pending before various courts. Ultimately, it will result in speedy and less expensive dispensation of justice to the Members of the abovementioned three Armed Forces of the Union.*

6. *The Notes on clauses explain in detail the various provisions contained in the Bill.*

7. *The Bill seeks to achieve the above objectives."*

4. Therefore, in this background, present Act was passed and Preamble of the Act reads as under:

> *"An Act to provide for the adjudication or trial by Armed Forces Tribunal of disputes and complaints with respect to commission, appointments, enrolment and conditions of service in respect of persons subject to the Army Act,* 1950, *the Navy Act,* 1957 *and the Air Force Act,* 1950 *and also to provide for appeals arising out of orders, findings or sentences of courts-martial held under the said Acts and for matters connected therewith or incidental thereto."*

5. Since the Army Act, 1950 which was nothing but an Act based on an English Act. Their Lordships had in no certain terms found that the Act does not provide a adequate relief, specially in the matters of Court Martial as there is only a relief to an appeal from Ceaser to Ceaser's wife that kind of relief was not found to be conducive to justice to the members of the Armed Forces in Independent India which is governed by the Constitution. Therefore, persuaded by the strong observations in the ***Lt.Col. Prithi Pal Singh Bedi Case (Supra),***

this Act was enacted, which was more than apparent from the statement of Object and Reasons and which is truly reflected in the Preamble of the Act. The Preamble of the Act clearly laid down that an adjudicatory institution is being sought to be established through this Armed Forces Tribunal Act which will adjudicate the appeals arising out of the orders, findings or sentences of courts-martial held under the said Acts. That shows that the Act contemplated a judicial adjudication of the orders passed by the Court Martial Tribunals. This is being reflected by Section 14 & 15 of the Act to which we will refer hereinafter. A 'Court Martial' has been defined in the Act in Section 3 (f), which reads as under:

> *"2(f) –court martial means a court-martial held under the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) including the disciplinary courts constituted under the Act or the Air Force Act, 1950 (45 of 1950)."*

7. Section 14 of the Act lays jurisdiction, powers and authority in the service matters which reads as under:

14. (*1*) Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority, exercisable immediately before that day by all courts (except the Supreme Court or a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to all service matters.

(*2*) Subject to the other provisions of this Act, a person aggrieved by an order pertaining to any service matter may make an application to the Tribunal in such form and accompanied by such documents or other evidence and on payment of such fee as may be prescribed.

(*3*) On receipt of an application relating to service matters, the Tribunal shall, if satisfied after due inquiry, as it may deem necessary, that it is fit for adjudication by it, admit such application; but where the Tribunal is not so satisfied, it may dismiss the application after recording its reasons in writing.

(*4*) For the purpose of adjudicating an application, the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing an application for default or deciding it ex parte;

(h) setting aside any order of dismissal of any application for default or any order passed by it ex parte; and

(i) any other matter which may be prescribed by the Central Government.

(*5*) The Tribunal shall decide both questions of law and facts that may be raised before it.

8. Sub-Section (2) says that any person aggrieved by an order pertaining to any service matter may make an application to the Tribunal in such form and accompanied by such documents or other evidence and on payment of such fee as may be prescribed. This pertains to original jurisdiction of Tribunal.

9. Though the expression of appeal has not been defined, however, Section – 15 lays down the jurisdiction, powers and authority in matters of appeal against the court-martial. The Section 15 of the Act reads as under:

> ***15.*** *(1) Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable under this Act in relation to appeal against any order, decision, finding or sentence passed by a courtmartial or any matter connected therewith or incidental thereto.*
>
> *(2) Any person aggrieved by an order, decision, finding or sentence passed by a courtmartial may prefer an appeal in such form, manner and within such time as may be prescribed.*
>
> *(3) The Tribunal shall have power to grant bail to any person accused of an offence and in military custody, with or without any conditions which it considers necessary:*
>
> *Provided that no accused person shall be so released if there appears reasonable ground for believing that he has been guilty of an offence punishable with death or imprisonment for life.*
>
> *(4) The Tribunal shall allow an appeal against conviction by a court-martial where–*
>
> > *(a) the finding of the court-martial is legally not sustainable due to any reason whatsoever; or*

(b) the finding involves wrong decision on a question of law; or

(c) there was a material irregularity in the course of the trial resulting in miscarriage of justice,

but, in any other case, may dismiss the appeal where the Tribunal considers that no miscarriage of justice is likely to be caused or has actually resulted to the appellant:

Provided that no order dismissing the appeal by the Tribunal shall be passed unless such order is made after recording reasons therefor in writing.

(5) The Tribunal may allow an appeal against conviction, and pass appropriate order thereon.

(6) Notwithstanding anything contained in the foregoing provisions of this section, the Tribunal shall have the power to–

(a) substitute for the findings of the court-martial, a finding of guilty for any other offence for which the offender could have been lawfully found guilty by the court-martial and pass a sentence afresh for the offence specified or involved in such findings under the provisions of the Army Act, 1950 or the Navy Act, 1957 or the Air Force Act, 1950, as the case may be; or

(b) if sentence is found to be excessive, illegal or unjust, the Tribunal may–

(i) remit the whole or any part of the sentence, with or without conditions;

(ii) mitigate the punishment awarded;

(iii) commute such punishment to any lesser punishment or punishments mentioned in the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950,as the case may be;

(c) enhance the sentence awarded by a court-martial:

Provided that no such sentence shall be enhanced unless the appellant has been given an opportunity of being heard.

(d) release the appellant, if sentenced to imprisonment, on parole with or without conditions;

(e) suspend a sentence of imprisonment;

(f) pass any other order as it may think appropriate.

(7) Notwithstanding any other provisions in this Act, for the purposes of this section, the Tribunal shall be deemed to be a criminal court for the purposes of section 175, 178, 179, 180, 193, 195, 196 or 228 of the Indian Penal Code and Chapter XXVI of the Code of Criminal Procedure, 1973.(2 of 1974)."

This pertains to appellate jurisdiction of Tribunal.

10. Section 15 empowers the Tribunal, to entertain the appeal / application from aggrieved person against the order passed by the Court Martial or any matter connected therewith or incidental thereto. That means any person aggrieved by an order, decision, finding or sentence passed by a court-martial may prefer an appeal in such form, manner and within such time as may be prescribed. Prescribed means prescribed under the rules. The particular procedure has been prescribed under the rules for presenting the appeal.

11. Therefore, Tribunal has original power u/s 14 & appellate power u/s 15. In the present case we are concerned with appellate power. The Tribunal u/s 15 has full power to grant bail to any person accused of any offence in military custody, with or without any condition, it considers necessary. The Tribunal is empowered to allow the appeal and set aside the conviction, if it is not sustainable due to any reason whatsoever or finding involves a wrong decision on the question of law or there was a material irregularity in the course of trial resulting in denial of justice. It has

also power to dismiss the appeal where Tribunal considers that no miscarriage of justice is likely to be caused to the appellant. Apart from this, Tribunal has been given power to substitute for the findings of the court-martial, a finding of guilty for any other offence for which the offender could have been lawfully found guilty by the court-martial and pass a sentence afresh for the offence specified or involved in such findings under the provisions of the Army Act, 1950 or the Navy Act, 1957 or the Air Force Act, 1950, as the case may be; if sentence is found to be excessive, illegal or unjust, the Tribunal may– (*i*) remit the whole or any part of the sentence, with or without conditions; (*ii*) mitigate the punishment awarded; (*iii*) commute such punishment to any lesser punishment or punishments mentioned in the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950, as the case may be; (iv) enhance the sentence awarded by a court-martial with an opportunity to the accused (*d*) release the appellant, if sentenced to imprisonment, on parole with or without conditions; (*e*) suspend a sentence of imprisonment; (*f*) pass any other order as it may think appropriate. It further says that the Tribunal shall be deemed

to be a criminal court for the purposes of section 175, 178, 179, 180, 193, 195, 196 or 228 of the Indian Penal Code and Chapter XXVI of the Code of Criminal Procedure, 1973.

12. Section 16 lays down that, in case a conviction of a person by court martial for an offence has been set aside or quashed, he shall not be liable to be tried again for that offence by a court-martial or by any other Court.

13. Sub-Section 2 of the Section 16 further lays down that the Tribunal after quashing a conviction, can make an order authorising the appellant to be retried by court-martial, but shall only exercise this power when the appeal against conviction is allowed by reasons only of evidence received or available to be received by the Tribunal under this Act and it appears to the Tribunal that the interests of justice require that an order under this section should be made. A proviso has been added that appellant shall not be retried under this section for an offence (*a*) the offence for which he was convicted by the original court-martial and in respect of which his appeal is allowed; (*b*) any offence for which he could have

been convicted at the original courtmartial on a charge of the first-mentioned offence; (*c*) any offence charged in the alternative in respect of which the court-martial recorded no finding in consequence of convicting him of the first-mentioned offence. It is further says that a person who is to be retried under this section for an offence shall, if the Tribunal or the Supreme Court so directs, whether or not such person is being tried or retried on one or more of the original charges, no fresh investigation or other action shall be taken under the relevant provision of the Army Act, 1950 or the Navy Act, 1957 or the Air Force Act, 1950, as the case may be, or rules and regulations made thereunder, in relation to the said charge or charges on which he is to be retried.

14. Under Section 17, The Tribunal, while hearing and deciding an appeal under section 15, shall have the power to order production of documents or exhibits connected with the proceedings before the court-martial; to order the attendance of the witnesses; to receive evidence; to obtain reports from court-martial; order reference of any question for enquiry; appoint a person with special expert

knowledge to act as an assessor; and to determine any question which is necessary to be determined in order to do justice in the case. Therefore, section 14, 15, 16 & 17 is a complete code so far as appeals arising against the order of Court Martial.

15. Since we are concerned with the appellate power of the Tribunal *vis-à-vis* and the section 164 of the Army Act, 1950, the Section 164 Army Act reads as under:

> "164. Remedy against order, finding or sentence of court-martial
>
> *(1) Any person subject to this Act who considers himself aggrieved by any order passed by any court-martial may present a petition to the officer or authority empowered to confirm any finding or sentence of such court-martial, and the confirming authority may take such steps as may be considered necessary to satisfy itself as to the correctness, legality or propriety of the order passed or as to the regularity of any proceeding to which the order relates.*
>
> *(2) Any person subject to this Act who considers himself aggrieved by a finding or sentence of any court-martial which has been confirmed, may present a petition to the Central Government, [the Chief of the Army Staff] or any prescribed officer superior in command to the one who confirmed such finding or sentence, and the Central Government, [the Chief of the* Army Staff] or other officer, as the case may be, may pass such order thereon as it or he thinks fit".

16. Before coming to Section 164, it may be relevant to mention that sentence of the Court Martial has to be confirmed u/s 153 of the Act and it clearly says that *"no finding or sentence*

of a general, district or summary, court-martial shall be valid except so far as it may be confirmed as provided by this Act". And the Chapter 12 deals with the detail procedure for confirmation and section 164 comes into play after the confirmation of the finding has been made by the competent authority. Then u/s 164, the aggrieved party is given further power of challenging their finding before the competent authority i.e. the authority empowered to confirm the sentence of court martial. The confirming authority can satisfy the correctness, legality and proprietary of such order or as to the regularity of any proceeding to which the order relates.

17. Then again under Sub-section 2 of Section 164 any person aggrieved by the finding or sentence can appeal to the Central Government or Chief of the Army Staff or any prescribed officer superior in command to the one who confirmed such finding or sentence, and the Central Government or the Chief of the Army

Staff or other officer, as the case may be, may pass such order thereon as it or he thinks fit.

18. Prior to coming of the Act of 2007, Section 164 of the Army Act used to provide an appellate remedy. But to borrow the expression as made in the case of ***Lt.Col. Prithi Pal Singh Bedi Case (Supra)*** was a illusory remedy "Ceaser to Ceaser's wife".

19. In this background, the question before us is if any person who has already filed an appeal u/s 164, then the Tribunal becomes functions officio to entertain the appeal u/s section 15 of the Act.

20. It may be relevant to mention here that Armed Forces Tribunal Act, 2007 is a subsequent legislation to the Act of Army Act, 1950 and we have already mentioned earlier the background in which the AFT Act, 2007 came into force. The section 39 of Act of 2007 clearly says that this act will have overriding effect. Section 39 reads:

"The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act"

21. Therefore, the primacy of this Act is beyond any doubt. (1) That the section itself provides that this Act of 2007 will prevail if any other provision of Act are inconsistent in this Act of 2007 and (2) This is a subsequent legislation on the same subject. When two legislation appears on the same subject, the subsequent legislation have the affect of overruling the previous legislation if inconsistent, then later prevails. Section 15 of the Act of 2007, which provides a remedy to the person who is convicted by the Court Martial and this, is a judicial adjudicatory remedy over the administrative remedy under section 164 of the Army Act, 1950. In this connection, we may refer to the Objects and Reasons and Preamble of the Act, which clearly lays down the aim and object behind enactment of this Act of 2007. The Act was brought by the Parliament because the anxiety was shown by the Apex Court in the case of ***Lt.Col. Prithi Pal Singh Bedi Case (Supra)*** that the armed personnel don't have any independent adjudicatory

institution where their grievances can be redressed. Therefore, this adjudicatory forum was constituted by the Parliament by enacting the Act of 2007. This is a subsequent enactment on the subject. The intention of this act is more than clear that it was brought about to redress the long awaited grievance of the armed forces that the appeal u/s 164 is not an appeal where armed personnel could feel satisfied that their matter has been examined by an independent body who is not connected with the armed forces. Section 15 of Act of 2007 has to be interpreted with the aims and objects read with preamble of the Act. Indian, UK & US Courts has laid down various modes of interpretation of Statute & Consensus of judicial opinion is that interpretation should be such which should be purposive & bring forth the real intention of legislature. In order to bring out the real intention of legislature & the mischief which is sought to be remedied we have to see

statement of object & reason, Preamble to find out what was the purpose for which this legislation was brought out.

22. ***Patanjali Shastri, CJ in Ashwani Kumar's case (AIR 1952 SC 369, p.378:1953 SCR1)*** observed "*As regards the proprietary of the reference to the Statement of Objects and Reasons, it must be remembered that it seeks only to explain what reasons induced the mover to introduce the Bill in the House and what objects he sought to achieve.*" Following it, ***Sinha, CJI observed***: *"It is well settled that the Statement of Objects and Reasons accompanying a Bill, when introduced in Parliament cannot be used to determine the true meaning and effect of the substantive provisions of the statute. They cannot be used except for the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation."*

23. In this connection Reference may be made to ***Secretary, Regional Transport Authority v. D.P. Sharma ((1989 Supp(1) SCC 407)*** and in this case it is observed that : *"in considering validity of the Act, this Court referred to the Statement of*

Objects and Reasons for the Act and on the basis of various affidavits filed on behalf of the State, observed that the operators were misusing their permits granted to as a contract carriage permits, and that in many cases the vehicles were used as stage carriages picking up and dropping passengers in the way. Accordingly, the legislature thought that to prevent such misuse and to provide for better facilities to transport passengers and to general public, it was necessary to acquire the vehicles, permits and all rights, title and interest of the contract carriage operators." In that context, their Lordship has said that the Statement of Objects & Reasons play a very important role and they are useful aid to the interpretation of the enactment and it gives a clue to the intention of the legislature.

24. Therefore, the reference of statement of objects and reasons is permissible to understand the background and surrounding circumstances in relation to the statute and the mischief which is sought to remedied.

25. Therefore, in order to understand the purpose for which the enactment was brought about the statement of object & reason can throw sufficient light. The main purpose or motivating fact was judicial adjudication of grievance of army personnel by an independent judicial forum. That is it will not be appeal from ceaser to ceaser's wife. Therefore, with that objective the present enactment was enacted. This is reflected in the Preamble which clearly lays down "to provide for appeals arising out of orders, findings or sentences of courts-martial held under the said Acts and for matters connected therewith or incidental thereto. The Preamble of the Act is a important aid to the interpretation. The Statute is an addict of legislature and the duty of Courts is to act upon true intention of the legislature. The job of judiciary is to interpret the provisions which advance the cause of justice and rather than defeat the same. ***The Gajendra Gadkar, J. in the case of Kannailal Sur V. Paramnidhi Sadhukhan (AIR***

2002 SC 1334,p.1340) observed that *"First and Primary rule of construction is that the intention of the Legislature must be found in words used by the Legislature itself"*. The famous rule of interpretation is Heydon's case which says that *"interpretation should be purposive and mischief which is being sought to be rectified".*

26. The preamble of the Act, it is very clearly says that the this Act is to provide a regular appeal against the order passed by the Court Martial & if we were to be interpret section 15 to mean that once a petition is been filed u/s 164 of the Army Act, then appeal will not be maintainable before the Tribunal that would virtually amount to defeat the main purpose of Act & we will be doing a great disservice to the Act of 2007. Such construction is totally misconceived & misplaced. The main purpose of enactment is more then apparent from the Preamble of the Act that is to provide an appeal to the independent judicial body i.e. Tribunal. If section 164 of the Army Act

was adequate forum to redress the grievances of armed personnel, then this Act of 2007 would not have been enacted at all. Since it was found by the Apex Court in the case of ***Lt.Col. Prithi Pal Singh Bedi Case (Supra),*** that provisions of Section 164 is wholly is insufficient and does not accord with the concept of justice & fair play, therefore, this Act of 2007 was enacted. Perhaps this relevant aspect seems to have been totally overlooked by the bench (Jaipur). If the bench would have gone through the Statement of Object and Reasons and Preamble perhaps they would not have come to this conclusion.

27. Section 39 clearly says that any provision which are inconsistent with this Act then provisions of this Act of 2007 will have overriding effect & prevail.

28. Whenever there are one or more enactments operating in the same field and each containing a *non obstante* clause stating that its provisions will have effect 'notwithstanding

anything inconsistent therewith contained in any other law for the time being in force'. Such conflict has to be resolved on consideration of purpose and policy, underlying the enactments and the language used in them. Another test applied is that the later enactment normally prevails over the earlier one.

29. In this connection, reference may be made in the case of ***Allahabad Bank Versus Canara Bank and Anr. (2004 4 SCC 406)***. This was the case where there was conflict with Recovery of Debts due to Banks and Financial Institutions Act, 1993 and Companies Act. Their Lordships has observed that jurisdiction of Tribunal in regard to adjudication is exclusive and after considering aims & objects and other aspects of the matter between the two provisions of the Act, the Lordship finally observed:

"the jurisdiction of the tribunal in regard to adjudication is exclusive. The RDB Act requires the Tribunal alone to decide applications for recover of debts due to banks or financial institutions. Once the Tribunal passes an order that the debt is due, the Tribunal has to issue a certificate under Section 19(22)

[formerly under Section 19(7)] to the Recovery Officer for recovery of the debt specified in the certificate. The question raises arises as to the meaning of the word "recovery" in Section 17 of the Act. It appears to us that basically the Tribunal is to adjudicate the liability of the defendant and then it has to issue a certificate under Section 19(22). Under Section 18, the jurisdiction of any other court or authority which would otherwise have had jurisdiction of any other court or authority which would otherwise have had jurisdiction but for the provisions of the Act, is ousted and the power to adjudicate upon the liability is exclusively vested in the Tribunal".

30. Their Lordships further held that *"thus, the adjudication of the liability and the recovery of the amount by execution of the certificate are respectively within the exclusively jurisdiction of the tribunal and the recovery Officer and no other court or authority much less the civil court or the Company Court can go into the said questions relating to the liability and the recovery except as provided in the Act".*

The Lordships further held that – *"Company Court cannot decide the cases of banks and financial institutions".*

31. Similarly in the Case of ***Union of India Vs. Elphinstone Spinning and Weaving Co. Ltd. & Ors. (AIR 2001 SC 724)*** it is observed that: *"A cardinal principle of construction of statute was that the true or legal meaning of an enactment was derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehended the mischief and its remedy to which the enactment was*

directed..... The Preamble of an Act, no doubt can also be read along with other provisions of the Act to find out the meaning of the words in enacting provisions to decide whether they are clear or ambiguous."

32. Similarly in the words of ***SIR JOHN NICHOLL,*** it is observed that *"It is to the preamble more specially that we are to look for the reason or spirit of every statute, rehearsing this, as it ordinarily does, the evils sought to be remedied, or the doubts purported to be removed by the statute, and so evidencing, in the best and most satisfactory manner, the object or intention of the Legislature in making or passing the statute itself."* ***(Brett v. Brett. (1826) 162 ER 456)***.

33. Similarly, ***Lord Tindal C.J.,*** in the case of Sussex Peerage [(1844) 11 Cl & F 85] observed *"if any doubt arise from the terms employed by the Legislature, it has always been held a safe means of collecting the intention to call in aid the ground and cause of making the statute, and to have recourse to the preamble, which according to Chief Justice Dyer is a 'key to open*

the minds of the makers of the Act, and the mischiefs which they intended to redress'."

34. Similarly, in the case of ***A.G. Vs. HRH Prince Ernest Augustus of Hanover, (1957) I All ER 49***, it is summarized that *"the preamble being part of the statute can be read along with other portions of the Act to find out the meaning of words in the enacting provisions as also to decide whether they are clear or ambiguous".*

35. Therefore, the Lordships has dealt with the effect of the subsequent legislation. Similarly, our attention was also invited to a decision in the cases of:

(1) ***Unique Butyle Tube Industries (P) Ltd. Vs. UP Financial Corporation and Others (2003 2 SSCC 455)***

(2) ***Transcore Vs. Union of India & Anr. (AIR 2008 SC 125.***

(3) ***Sanjeev Gupta & Anr. Vs. Union of India & Anr. (2005 1 SCC 72.***

36. Keeping in view the law laid down in the aforesaid cases, the legal question that emerges is that the power which was

being exercised u/s 164 (2) of The Army Act, 1950 prior to the coming of the Act of 2007 of AFT was so called an administrative power and it was not a judicial determination or a judicial adjudication. Present Act confers a judicial adjudication of the orders passed in the Court Martial. Therefore, the power conferred under Section 14 and 15 will prevail all the powers of under Section 164 of the Army Act, 1950. Since prior to the coming into force of the Act of 2007, there was no judicial forum constituted under the Army Act, Navy Act or Air force Act or by any other enactment, therefore, that appellate power was exercised by the confirming authority administratively. Now this power has been conferred on the Tribunal to adjudicate judicially under section 15 of the Act of 2007.

37. But the next question arises that what will be the position of the section 164 of the Army Act after coming into force of the AFT Act, 2007. The status of the section 164 will be

subordinate to the that of the Tribunal and any order passed exercising section 164 will not deprive the judicial adjudication of the issue by the Tribunal. The power exercised under section 164 can be at best be said to be an administrative power and not a judicial power by any stretch of imagination.

38. There is no conflict between the two sections, Section 15 of the Act of 2007 and Section 164(2) of the Army Act. Both can survive if our perception is clear that Section 15 is the judicial power and Section 164 is an administrative power. Section 15 gives a judicial review of the administrative action. However, once a judicial power is already exercised and orders are passed by the authorities, then administrative remedy provided u/s 164(2) automatically stand ousts. In this connection, one of the points which has been raised by the Jaipur bench is with reference of section

21 of the Act of 2007 i.e. exhaustion of the alternative remedy under the Act. Section 21 uses the word 'ordinarily', an application shall not be admitted unless it is satisfied that applicant had availed the remedy available to him under the Act i.e. Army Act, Navy Act or Air Force Act as the case may be. The expression ordinarily does not mean to prohibit the jurisdiction of the judicial remedy under the Tribunal. This is a rule of prudence that the party should first exhaust as far as possible administrative remedy but that does not touch the jurisdiction of the Tribunal to adjudicate the matter judicially. The judicial determination of administrative action always take precedence over the administrative action. This is cardinal principle of judicial system. Therefore, section 21 will not abrogate the power of the Tribunal to entertain appeal against the order of Court Martial. Even pendency of petition u/s 164(2) of the Army Act will not prevent Tribunal to entertain appeal u/s 15 of the Act of 2007 against order of Court Martial order.

39. Therefore, we hold that view taken by the AFT (Jaipur Bench) does not lay down a correct law and we hereby over rule the same. The three questions which have been referred to the Tribunal are answered as under:

(1) Section 15 will over ride section 164 of the Army Act and the Tribunal has full jurisdiction to entertain the appeal notwithstanding any petition filed by aggrieved party u/s 164 of the Army Act, 1950.

(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.

(3) The pendency of the petition under section 164 will not bar to exercise of power u/s 15 of the Act. Once the judicial determination has taken place then it will be binding on the parties and thereafter no further

interference by the Section 164 of the Army Act is permissible.

40. The matter may be remitted back to the Bench for deciding the matter in light of the law laid down.

Sd x x x

[Justice A.K. Mathur]
Chairperson

Sd x x x

[Justice S.S. Kulshrestha]
Member(J)

Sd x x x

[Lt. Genl. ML Naidu]
Member (A)

New Delhi
19th October, 2010