

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

1.
OA 590/2014
With MA 679/2014

Col Ashok Mishra, SMPetitioner

Versus

UOI & Ors.Respondents

For petitioner : Mr K Ramesh & Ms. Archana Ramesh, Advocates
For respondents : Ms Shilpa Singh, Advocate

WITH

2.
OA 568/2014

Signalman Vikram Singh TomarPetitioner

Versus

UOI & Ors.Respondents

For petitioner : Mr K Ramesh & Ms. Archana Ramesh, Advocates
For respondents : Ms Sangeeta Tomar, Advocate

WITH

3.
OA 569/2014
With MA 653/2014

Col Vinod S, SM, VSMPetitioner

Versus

UOI & Ors.Respondents

For petitioner : Mr K Ramesh & Ms. Archana Ramesh, Advocates
For respondents : Ms Shilpa Singh, Advocate

WITH

4.
OA 573/2014
With MA 661/2014

Col Vinod S, SM, VSMPetitioner

Versus

UOI & Ors.Respondents

For petitioner : Mr K Ramesh & Ms. Archana Ramesh, Advocates
For respondents : Mr Sayan Samaddar, Adv. proxy for Mr Ankur Chhibber,
Advocate

WITH

5.
OA 624/2014

Col PN Mohapatra, KC, VSMPetitioner

Versus

UOI & Anr.

.....Respondents

For petitioner : Mr K Ramesh & Ms. Archana Ramesh, Advocates
For respondents : Mr Anil Gautam, Advocate

CORAM:

HON'BLE MR. JUSTICE PRAKASH TATIA, CHAIRPERSON.
HON'BLE MR. JUSTICE SURINDER SINGH THAKUR, MEMBER.
HON'BLE LT. GEN. SANJIV LANGER, MEMBER.

ORDER
22.04.2015

The petitioners filed OA 590/2014, OA 568/2014, OA 569/2014, OA 573/2014 and OA 624/2014 before the Principal Bench of the Tribunal. It appears that there was an objection by the respondents in entertaining the above OAs, on the plea of lack of territorial jurisdiction. Finding this situation, the petitioners submitted applications under Sections 20 and 27 of the Armed Forces Tribunal Act 2007, wherein the petitioners substantially took the plea that the Principal Seat of the Tribunal has jurisdiction to decide the matter, but finding difficulty due to the objection of the respondents/ Union of India, they thought it proper to submit applications under Section 20 and 27 of the AFT Act 2007 so as to obtain the order from the Chairperson of the Tribunal that the above OAs may be retained before the Principal Bench of the Tribunal. The matter was placed before the Chairperson, upon which on 12.12.2014, an order was passed that the question of jurisdiction in any matter can be decided by the Bench of the Tribunal constituted under Section 5 of the AFT Act 2007, obviously not by the Chairperson, while exercising jurisdiction under Rule 6 of the AFT (Procedure) Rules 2008 or the application under Section 27 of the AFT Act 2007. Therefore, the petitioners' prayer for retaining the OAs at the Principal Bench of the Tribunal was rejected.

2. However, it was brought to the notice of the Chairperson that on the question of jurisdiction, there are two conflicting judgments of two Benches of the Principal Bench of the Tribunal, one delivered in OA 316/2013- Col GS Ahluwalia Vs Union of India & Ors decided on 10.02.2014 and the other delivered in OA 47/2014-Lt Col AS Chowdhary Vs Union of India & Ors, decided on 06.08.2014. Vide order dated 12.12.2014. Therefore it was ordered by the Chairperson that issue required to be considered by a Larger Bench. Therefore, these matters have been placed before the Larger Bench.

3. After the order dated 12.12.2014 (passed by the Chairperson), the petitioners submitted application before the Chairperson and requested for withdrawal of the reference to the Larger Bench in view of the fact that the Judgment of Lt Col AS Chowdhary was set aside by the Hon'ble Division Bench of the Delhi High Court in the case of Lt Col AS Chowdhary Vs Union of India decided on 09.01.2015. Vide order dated 12.03.2015. The Chairperson declined to withdraw the reference once it has been ordered and issue has been referred to the Larger Bench. The petitioner was given liberty to take their plea before the Larger Bench.

4. Today, learned counsel for the petitioners submitted that, since there is no conflicting judgment in existence as the judgment of Lt Col AS Chowdhary was set aside by the Hon'ble Delhi High Court, therefore, the Larger Bench need not answer the reference in view of the subsequent development.

5. Learned counsel for the Union of India tried to support the judgment of Lt Col AS Chowdhary in spite of the fact that the said judgment was set aside by the Hon'ble Delhi High Court. The learned counsel for Union of India, submitted that subsequent to Delhi High Court judgment in Lt Col AS Chowdhary case, which was decided on 09.01.2015, the Hon'ble Supreme Court in Civil Appeal No. 7400/2013- Union of India & Ors Vs. Maj. Gen Srikant Sharma, held that the High Court should not entertain challenge to Tribunal's order under Article 226 of the Constitution of India. This judgment in Maj Gen Srikant Sharma was delivered on 11.03.2015. According to the learned counsel for Union of India in the judgment of Lt Gen Srikant Sharma since it has been held that the High Court has no jurisdiction to entertain such matters even under Article 226 of the Constitution in view of Section 30 and 31 of the Armed Forces Tribunal Act, therefore, the judgment given by the Bench of the Tribunal in OA 47/2014 still holds field. Learned counsel for Union of India also submitted that the judgment delivered in the case of Lt Col AS Chowdhary yet has not been challenged by the respondents, may be for the reason that the matter has been referred to the Larger Bench by the Chairperson. Therefore also, the issue referred to the Larger Bench should be decided.

6. We are of the considered opinion that the judgment of the Hon'ble Delhi High Court delivered on 09.01.2015 is prior to the judgment of the Hon'ble Supreme Court in Maj Gen Srikant Sharma, therefore, today in a reference

where the question referred to the Larger Bench is to resolve the controversy between the two conflicting judgments of the Coordinate Benches of the Tribunal, we are not inclined to enlarge the scope of reference for the simple reason that the judgment of the Hon'ble Delhi High Court has set aside the Bench judgment delivered in the case of Lt Col AS Chowdhary. Therefore there is no foundation to answer the reference as the question does not survive for consideration of the Larger Bench in view of the setting aside of the order of the Bench of the Tribunal delivered in OA 47/2014 Lt Col AS Chowdhary Vs Union of India dated 06.08.2014. We find the reference became incompetent due to the above reasons. Therefore, the reference is answered accordingly.

7. The matter be placed before the concerned Bench of the Tribunal. We have not made any observation for or against any question of law and therefore, it is for the Bench to consider the issue in accordance with law.

(PRAKASH TATIA)
CHAIRPERSON

(SURINDER SINGH THAKUR)
MEMBER

(SANJIV LÄNGER)
MEMBER

Dated: 22.04.2015
als

**COURT NO.2, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

1.

OA 590/2014 in MA 679/2014

Col Ashok Mishra, SM

...Petitioner

Versus

UOI & Ors

...Respondents

For petitioner : Mr.K Ramesh, Advocate alongwith petitioner
For respondents : Mr. Prabodh Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE R.C. MISHRA, MEMBER

HON'BLE VICE ADMIRAL AG THAPLIYAL, MEMBER

ORDER

21.04.2016

As prayed for, without affecting the merits of the contentions raised therein, the OA stands dismissed as withdrawn with liberty to file afresh incorporating the challenge to order dated 13.11.2014 allowing the Statutory Complaint preferred by the petitioner in part.

**(R.C. MISHRA)
MEMBER (J)**

**(A.G. THAPLIYAL)
MEMBER (A)**