

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

7.

MA 2004 AND MA 2005/2020 IN OA 1101/2015

Union of India and Ors. Applicants
VERSUS
Maj A B Gupta Respondent

For Applicants : Mr. Avdhesh Kumar Singh, Advocate
For Respondent : Mr. Manoj Kumar Gupta, Advocate

CORAM

HON'BLE MS. JUSTICE ANJANA MISHRA, MEMBER (J)
HON'BLE LT GEN P. M. HARIZ, MEMBER (A)

ORDER
27.04.2023

MA 2005/2020

Keeping in view the averments made in the miscellaneous application and finding the same to be bona fide, in the light of the decision in Union of India and others v. Tarsem Singh (2008) 8 SCC 648, the same is allowed condoning the delay in filing the MA.

MA 2004/2020

2. This is an application filed by Union of India under Section 31 of the Armed Forces Tribunal Act, 2007, for grant of leave to appeal for impugning the order of this Tribunal dated 12th October, 2017, to the Hon'ble Supreme Court.

3. The following points of law of general public importance raised by the applicants read as under:

“i. What is the validity of impugned judgment, specifically when the impugned judgment is based on Judge Maj. S.Y. Kaluskar (Retd.) Union of India Vide OA No. 1046/2016 decided on 11.09.2017 & Maj. Ajit Singh Rathi (Retd.) Vs Union of India vide OA NO. 707/2016 decided on 12/10/2017 subsequently Hon’ble Supreme Court of India rejected order of this Hon’ble Tribunal on the principle of para 1 of impugned judgment in Civil Appeal No. 770-771 of 2018 title as Suchet Singh Yadav & Ors. Vs Union of India & others on 21/02/2018 along with others matter on similar/same issues wherein the principle based on the impugned judgment rejected/set aside by the Hon’ble Apex Court and also similarly Union of India vs Major S.Y Kaluskar (Retd.) vide Civil Appeal (D) No. 17162 & 17159/2018 leave granted on 04/07/2018 impugned judgment?

ii. Whether principle of prospective judgment of retrospective judgment would be applicable in terms of judgment passed by the Hon’ble Supreme Court of India in aforesaid judgment?

iii. Whether the judgment passed by this Hon’ble Tribunal would be exist specially when the Hon’ble Supreme Court has rejected the principle laid down in the impugned judgment? Further the impugned judgment is not nullity in eyes of law or is it not tenable in eyes of law?

iv. Whether principle/observations/views taken by Hon’ble Supreme Court of India in Civil Appeal No. 770-771 of 2018 title as Suchet Singh Yadav & Ors. Vs Union of India & others on 21/02/2018 & Union of India vs Major S.Y Kaluskar (Retd.) vide Civil Appeal (D) No. 17162 & 17159/2018 leave granted on 04/07/2018 jwould be applicable or not?”

4. Having heard learned counsel on both sides and on going through the points of law of general public importance raised above and also in view of the judgment of the Hon'ble Supreme Court in the case of *Suchet Singh Yadav and Ors.* Vs. *Union of India and Ors.* (Civil Appeal Nos.770-771 of 2018) decided on 21st February, 2018, the application for leave to appeal to impugn the order dated 12th October, 2017 is allowed.

5. MA stands disposed of.

(ANJANA MISHRA)
MEMBER (J)

(P. M. HARIZ)
MEMBER (A)

vks/Neha
OA 1101/2015