

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

6.

OA 3/2024

Ex Sgt Sonu Singh	Applicant
Versus		
Union of India & Ors.	Respondents

For Applicant : Mr. Ajit Kakkar, Advocate with
Ms. Chhavi Yadav, and
Mr. Rajat Gupta, Advocates

For Respondents : Mr. Anil Gautam, Sr. CGSC with
Wg Cdr Ashish Kakkar

CORAM

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

O R D E R
10.01.2024

OA 3/2024

Heard on the question of admission.

2. Learned counsel for the respondents raises an objection to the effect that without exhausting the Departmental remedies available, this application is not maintainable in view of the provision of the Section 21 of the Armed Forces Tribunal Act, 2007.

3. Under the Armed Forces Tribunal Act, 2007 a statutory requirement of exhausting departmental remedy as provided under the relevant Departmental Rules and Regulations is a

mendatory requirement. Section 21 of the Armed Forces Tribunal Act, 2007 contemplates that **‘the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of the remedies available to him under Army Act, Navy Act and Air Force Act’.**

4. In this case taking note of the aforesaid statutory requirement, the procedure and rules as have been framed and the Statutory performa notified for submission of an application prescribed by the legislating authorities, it is seen that in para 6 of the said performa(form), separate column has been indicated to mention the details of the departmental remedy exhausted. This apparently means that before filing an application under Section 14 or 15 of the Armed Forces Tribunal Act, 2007, it is incumbent upon the applicant to show how the remedy available as per the Army Act, Navy Act and Airforce Act and the rules framed thereunder or as to in what manner the departmental remedies provided therein has been exhausted, this is to be brought to the notice of the Tribunal at the time of admission and without exhausting the department remedy ordinarily unless a case for exception is not made out the application will not be admitted for hearing.

5. We find that in this case after the applicant was dismissed from service vide impugned order dated 30th June, 2023 under Section 20 (3) of the Air Force Act read with Air Force Rules, 1969, the applicant has not exhausted the statutory rules/remedies available to him under the Air Force Act and the rules framed thereunder. Except for submitting a mercy petition, vide Annexure A-4 on 1st September, 2023 that to the President of India claiming grant of pension under the powers available to the President of India being the Supreme Commander of the Armed Forces, the applicant has not resorted to the departmental remedies available to him under the rules. The prayer made by the applicant in this application is to quash and set aside the impugned action taken on the basis of the Court of Inquiry and he wants to be reinstated into the service with all back wages. Apparently from the documents available on record, it is seen that the applicant has not exhausted the departmental remedies available and in reply to para 6 of the performatum for submitting an application under Section 14/15 of the Armed Forces Tribunal Act, 2007, the applicant makes a statement and a declaration to the effect that he has availed of all the remedies available to him under the relevant rules and act.

6. In our considered view, this is an incorrect statement made in the application filed before this Tribunal, and once the applicant has not exhausted the statutory remedy available, we see no reason to exercise our discretionary power available for admitting the application without exhausting the alternate remedy. Normally when a statute provide a detailed procedure to be followed for invoking the jurisdiction of this Tribunal, it is incumbent upon the applicant to exhaust all remedies as are available under the departmental rule and until and unless exceptional circumstances and reasons for bypassing the statutory remedy is pleaded and established. No such exceptional cause or reason is indicated by the applicant in this application therefore finding the applicant not to have complied with the requirement of the Section 21 of the Armed Forces Tribunal, Act, 2007 we are not inclined to take cognizance of the application for the present.

7. Accordingly, we dispose of the matter granting liberty to the applicant to take recourse to the departmental remedies available under the statute/act or rules. In case any appeal/representation or any memorandum is filed before the Competent Authority within a period of 45 days from

today, the Competent Authority shall take a decision with regard to the same in accordance with law and after exhausting the aforesaid remedy as provided under Section 21 of the Armed Forces Tribunal Act, 2007 the applicant will have liberty to approach this Tribunal afresh in accordance with law.

8. We may further observe the purpose of incorporating a provision like Section 21 of the Armed Forces Tribunal Act, 2007 in the statute is to enable this Tribunal to evaluate and be apprised itself of the fact or law as to what was the reason and as to why the action has been taken and how the grievance of the applicant has been dealt with so that the reasons given and action taken can be evaluated in the backdrop of legal requirement. The system of approaching this Tribunal without exhausting the alternate remedy deprives this Tribunal of the benefit of having the reasons and the justifications that weighed in the mind of the higher authority when the original impugned action was subjected to challenge before the higher authority in the form of an appeal or representation.

9. That being so, we are compelled to relegate the applicant to take recourse of the alternate remedy and then invoke the jurisdiction of this Tribunal.

10. Application stands disposed off for the present.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN C.P. MOHANTY]
MEMBER (A)

Priya