

**IN THE ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**OA/151/09**

**3398223 M SEP JAGJIT SINGH  
S/O. EX HAV ROMI SINGH  
74 INF.BDE  
C/O 56 APO**

**...APPELLANT**

**VERSUS**

**UNION OF INDIA & ORS.**

**...RESPONDENTS**

**CONNECTED WITH OA/148/10**

**ARMY NO.3198381X  
SEPOY KRISHH PAL SINGH  
UNIT-9 JAT**

**VERSUS**

**SECRETARY, GOVT. OF INDIA & ORS.**

**OA/21/10**

**IC 40 234 'M' LT COL ARUN KUMAR**

**VERSUS**

**UNION OF INDIA & OTHERS**

**OA/25/10**

**NO.3188509 K  
EX NK CLK NETRAPAL SINGH**

**VERSUS**

**UNION OF INDIA & OTHERS**

**CORAM :**

**HON'BLE SH. S.S.KULSHRESTHA, MEMBER**  
**HON'BLE SH. S.S.DHILLON, MEMBER**

**J U D G M E N T**

**DATE : 23.04.2010**

1. In all these applications, the question of jurisdiction of this bench has been challenged from the side of the Union of India as the impugned order passed by Court Martial (CM)/General Court Martial (GCM)/ Summary Court Martial (SCM)/District Court Martial (DCM) pertained to the area which falls within the jurisdiction of different Benches established under Section 4 of the Armed Forces Tribunal Act, 2007 (which is hereinafter referred as 'The Act'). It is also said that the orders passed on non statutory complaint, statutory complaint or petition made to Govt. of India against the findings and the conviction recorded by any Court Martial or pendency of representation would not confer any cause of action or a part of cause of action for the purposes of hearing of appeal against conviction under Section 15 of the Act. However, in view of provisions as contained under Rule 6 of the Armed Forces Tribunal

(Procedure) Rules, 2008 for the convenience of the appellant past, present posting and ordinary place of residence makes him entitled to resort the jurisdiction of a particular Bench but here the cases of these appellants do not fall in that category. To the contrary from the side of Learned Counsel for appellants and the learned members of Bar namely, Sh.O.P.Singh, Sh.D.S.Kauntae, Sh. G.K.Sharma, Sh. N.L.Bareja and Sh.S.M.Dalal arguments were advanced that the cause of action or part of cause of action is also the decisive factor which will arise from the passing of orders on the statutory complaint or petition by the Chief of the Army/Air/Naval Staff or Government of India in New Delhi as being the principle seat of their office. Moreover this is the essential requirement for filing appeal under the Act i.e. to exhaust the alternative remedy by way of filing statutory complaint under Section 164 (2) of the Army Act or other corresponding Sections of the Navy and Air Force Acts.

2. The Learned Amicus Curiae has also assisted this Bench by furnishing synopsis specifying the scope of Section 14, 7, 15, 20 and 21 of the Act. As regards Section 15 pertaining to appeal it was emphasized that this Tribunal shall exercise the powers in respect

of the decisions given by the Court Martial which are peri-meteria with that of the Sessions Court, as per the jurisdiction vested with them. Further the synopsis furnished by him reads as under:

*Thus in relation to any order, decision, finding or sentence passed by a court-martial or any matter connected therewith or incidental thereto the Tribunal exercises appellate jurisdiction.*

*A court martial (except Summary Court Martial) has powers to try cases triable by a “Sessions Court”. The powers vested in a Court martial (except Summary Court Martial) are akin to powers vested in a Sessions Court.*

*It is the High Court in the territorial jurisdiction of which the Session Court is situated that exercises appellate jurisdiction in relation to any order, decision, finding or sentence passed by that Session Court or any matter connected therewith or incidental thereto.*

*Thus a fiction is created whereby the Court martial is considered to be a “Sessions Court” and the Bench a “High Court”. Just as in the case of the Session Court, the High Court in the territorial jurisdiction of which the Session*

*Court is situated exercises appellate jurisdiction in relation to any order, decision, finding or sentence passed by the Session Court or any matter connected therewith or incidental thereto, it is the Bench (Fictional High Court) in the territorial jurisdiction of which the Court Martial (Fictional Session Court) is situated that shall exercise appellate jurisdiction in relation to any order, decision, finding or sentence passed by that court martial or any matter connected therewith or incidental thereto.*

*As submitted hereinabove, Section 15 clearly states that the A.F.T. exercises appellate jurisdiction in relation to Court Martial matters. Appellate Jurisdiction in the case of Sessions Courts is exercised by the High Court within the territorial jurisdiction of which the Sessions Court is situated. As submitted before if the Court Martial is considered to be a fictional Sessions Court then the fictional High Court would be the one located in the State where the Court martial is held. Thus if the Court Martial is held say somewhere in Rajasthan, then the Jaipur Bench shall alone have the jurisdiction.*

3. Since the challenge in all these four appeals pertains to the conviction and sentence passed by any Court Martial and so the question regarding jurisdiction of the Tribunal under Section 15 of the Act is taken for determination. In the context of the submissions made by the learned counsel for the parties and learned Amicus Curiae it would be appropriate if a brief history of creation of Tribunal is referred.

4. Article 323A of the Constitution stipulates that Parliament may by law provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government. Parliament enacted 'Armed Forces Tribunal Act' for adjudicating the service matters/disputes of the persons subject to Army Act , Navy Act and Air Force Act. The 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. The jurisdiction, powers and the authority of the Tribunals under the Act are such that it is the function of judicial review itself, which was hereto before not provided under the Army Act, Navy Act or Air Force Act except by way of writ jurisdiction. They are to act on the same principles as the High Courts, in its original and appellate jurisdiction, though with slightly less formality of procedure and will also be subject to the Special Appellate jurisdiction of the Supreme Court.

6. Central Government, Ministry of Defence vide the notification dated 07<sup>th</sup> August, 2009 (Published in Extraordinary

Gazette of India, Part-II-Vol.IV) established Armed Forces Tribunal, at Delhi which is quoted below:

**S.R.O.9(E)-In exercise of the powers conferred by Section 4 of the Armed Forces Tribunal Act, 2007 (55 of 2007), the Central Government hereby establishes the Armed Forces Tribunal with effect from the 10<sup>th</sup> August, 2009, which shall be appointed day within the meaning of clause (c) of Section 3 of the Act.**

**[F.No.7 (6)/2009/D (AFT Cell)]**

**ANAND MISRA, Jt. Secy.**

7. Further Central Government issued different notifications establishing Benches at different places and deferring their territorial jurisdiction as under:

(i) Notification dated 21<sup>st</sup> October, 2009 (Published in Extraordinary Gazette of India, Part-II-Vol.IV) :

**S.R.O.14(E)-In exercise of the powers conferred by sub-section (4) of Section 5 of the Armed Forces Tribunal Act, 2007 (55 of 2007), the Central Government notifies the Bench of the**



**Armed Forces Tribunal at Chennai with effect from 26<sup>th</sup> day of October, 2009, which shall have jurisdiction within the territorial limits of the States of Tamil Nadu and Andhra Pradesh and the Union territory of Puducherry.**

**[F.No.7 (6)/2009/D (AFT Cell)]**

**ANAND MISRA, Jt. Secy.**

**(ii)** Notification dated 28<sup>th</sup> October, 2009 (Published in Extraordinary Gazette of India, Part-II-Vol.IV) :

**S.R.O.15(E)-In exercise of the powers conferred by sub-section (4) of Section 5 of the Armed Forces Tribunal Act, 2007 (55 of 2007), the Central Government hereby notifies the Bench of the Armed Forces Tribunal at Jaipur with effect from 3<sup>rd</sup> day of November, 2009, which shall have jurisdiction within the territorial limits of the States of Rajasthan.**

**[F.No.7 (6)/2009/D (AFT Cell)]**

**ANAND MISRA, Jt. Secy.**

**(iii)** Notification dated 5<sup>th</sup> November, 2009 (Published in Extraordinary Gazette of India, Part-II-Vol.IV) :

**S.R.O.16(E)-In exercise of the powers conferred by sub-section (4) of Section 5 of the Armed Forces Tribunal Act, 2007 (55 of 2007), the Central Government hereby notifies the Bench of the Armed Forces Tribunal at Lucknow with effect from 9<sup>th</sup> day of November, 2009, which shall have jurisdiction within the territorial limits of the State of Uttar Pradesh, Uttrakhand, Chhatisgarh and Madhya Pradesh.**

**[F.No.7 (6)/2009/D (AFT Cell)]**

**ANAND MISRA, Jt. Secy.**

**(iv)** Notification dated 10<sup>th</sup> November, 2009 (Published in Extraordinary Gazette of India, Part-II-Vol.IV) :

**S.R.O.17(E)-In exercise of the powers conferred by sub-section (4) of Section 5 of the Armed Forces Tribunal Act, 2007 (55 of 2007), the Central Government notifies the Bench of the Armed Forces Tribunal at Chandigarh with effect from 16<sup>th</sup> day of November, 2009, which shall have jurisdiction within the territorial limits of the States of Punjab, Haryana, Jammu and Kashmir, Himachal Pradesh and the Union Territory of Chandigarh.**

**[F.No.7 (6)/2009/D (AFT Cell)]**

**ANAND MISRA, Jt. Secy.**

(v) Notification dated 18<sup>th</sup> November, 2009 (Published in Extraordinary Gazette of India, Part-II-Vol.IV) :

**S.R.O.18(E)-In exercise of the powers conferred by sub-section (4) of Section 5 of the Armed Forces Tribunal Act, 2007 (55 of 2007), the Central Government notifies the Bench of the Armed Forces Tribunal at Kolkata with effect from 23<sup>rd</sup> day of November, 2009, which shall have jurisdiction within the territorial limits of the States of West Bengal, Bihar, Jharkhand and Orissa and the Union Territory of Andaman and Nicobar Islands.**

[F.No.7 (6)/2009/D (AFT Cell)]

**ANAND MISRA, Jt. Secy.**

(vi) Notification dated 2<sup>nd</sup> December, 2009 (Published in Extraordinary Gazette of India, Part-II-Vol.IV) :

**S.R.O.19(E)-In exercise of the powers conferred by sub-section (4) of Section 5 of the Armed Forces Tribunal Act, 2007 (55 of 2007), the Central Government hereby notifies the Bench of the Armed Forces Tribunal at Kochi with effect from 7<sup>th</sup> day of December, 2009, which shall have jurisdiction within the territorial limits of the**

**States of Kerala and Karnataka and Union territory of Lakshadweep.**

**[F.No.7 (6)/2009/D (AFT Cell)]**

**ANAND MISRA, Jt. Secy.**

**8.** The questions for determination before this Bench are as to (i) whether this Tribunal has jurisdiction to entertain appeal under Section 15 of the Act against the order passed by any Court Martial when it was held at the place not falling within its territorial jurisdiction? (ii) Whether the order passed by the Chief of the Army/Air/Naval Staff or Central Government in respect of these proceedings would be taken to conferring cause of action for these appeals under Section 15 of the Act? (iii) To what extent the jurisdiction of the Tribunal can be resorted to in view of the arrangement made under Rule 6? In order to answer these moot questions, relevant provisions may be quoted as below:

**Section 15 of the Act: Jurisdiction, powers and authority in matters of appeal against court-martial- (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 court-martial or any matter connected therewith or incidental thereto.

(2) 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.

(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 therefore 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 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 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;

(ii) commute such punishment to any lesser punishment or punishments mentioned in the Army Act, 1950 (46 of 1950) or the Navy Act, 1957

**(62 of 1957) or the Air Force Act, 1950 (45 of 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 sections 175, 178, 179, 180, 193, 195, 196 or 228 of the Indian Penal Code (45 of 1860) and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).**

**Rule 6 of The Armed Forces Tribunal (Procedural) Rules , 2008**

**Place of filing application –(1) An application shall ordinarily be filed by the applicant with the Registrar of the Bench within whose jurisdiction-**

**(i) the applicant is posted for the time being, or was last posted or attached; or**

**(ii) where the cause of action , wholly or in part, has arisen:**

**Provided that with the leave of the Chairperson the application may be filed with the Registrar of the Principal Bench and subject to the orders under section 14 or section 15 of the Act, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter.**

**(2) Notwithstanding anything contained in sub-rule (1), a person who has ceased to be in service by reason of his retirement, dismissal, discharge, cashiering, release, removal, resignation or termination of service may, at his option, file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application.**

**9.** It is urged by the learned members of the Bar that in construing a statutory provision the first and foremost rule of construction is that of literal construction. All that court has to see at the very outset is, what does the provision say? If the provision is unambiguous and if from that provision the legislative intent is clear, the other rules of construction of statute need not be called into aid,



otherwise rules of construction of statutes are called in aid only when the legislative intention is not clear. It is undoubtedly a settled legal position that the function of the court/Tribunal is to ascertain the meaning of the words used by the Legislation. [See *Hiralal Ratanlal Vs. State of U.P.*, (1973)1 SCC 216 (Para 22); *New Piece Goods Bagah Co.Vs. CIT*, 1950 SC 165, *Arvind Mohan Sinha Vs. Amulya Kumar*, (1974) 4 SCC 222; *CIT Vs. Ajax Products Ltd*, AIR 1965 SC 1358; *State of Assam Vs. D.P. Barma*, AIR 1969 SC 831; *M.V.Josh Vs. M.Y.Shimpi*, AIR 1961 S.C. 1494; *Collector Customs Vs. Dig Vijay Sinhji Spring and Weaving Mills*, AIR 1961 SC 1549; *Ram Kishan Vs.State of Delhi*, AIR 1956 SC 476; *CIT Vs. G.Hyatt* (1971) 1 SCC 466; *Amar Singh Vs. State of Rajasthan*, AIR 1955 SC 504 at 526; *Nagan Corporation Vs. Employees*, AIR 1960 S.C.675 (Para 9)]. Apex Court in the case of *Union of India Vs. Deoke Nandan Aggarwal* (1992) Supp. (1) of SCC Page 323 at paras 14 observed that:

**It is not the duty of the court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The court cannot rewrite, recast or reframe the legislation for the very good**

**reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself.**

**10.** Thus the courts are bound by the mandate of Legislature once it has expressed its intention in words, which have a clear significance and meaning, the court is precluded from speculating. They would not be justified in straining the language of the statutory provision as to ascribe the meaning which cannot be warranted by the words employed by the Legislature. It is wrong to first introduce an ambiguity by giving certain expression a particular meaning and then to make an attempt to emerge out of semantic confusion and obscurity by having resort to the presumed intention of the Legislature.

**11.** The appeal under section 15 of the Act is essentially against the order of conviction because of the order of sentence is merely consequential thereto, even the order of sentence can be questioned if it is harsh and disproportionate to the established guilt. Therefore, when the appeal is preferred under Section 15 of the Act it is against both the conviction and sentence. But we see no reason to enlarge the scope of evaluating the order passed by the statutory authority under section 164 (2) of the Army Act or corresponding Sections of the Air Force or Naval Acts on the statutory complaint. The legal position is clear that an appellate court can suspend or grant stay of order of conviction or ultimately set aside the conviction. But it cannot exercise jurisdiction to the administrative order passed on the representation under Section 164(2) of the Army Act or corresponding Sections of the Air Force or Naval Acts. The person convicted cannot obtain an order of stay of such administrative order passed by the Authority. Grant of relief under Section 15 is confined to the conviction and sentence passed by the court as it stands after modification by the Authority. Provisions of appeal under Section 15 cannot be interfered by implications to make scrutiny of the order passed by the Authority on statutory complaint/petition.

**12.** Granting relief against the order of the Authority on statutory complaint in the matter of conviction in the teeth of express provisions of the statute to the contrary is not permissible. Even on equitable consideration the court cannot ignore or overlook the provisions of the statute. Equity must yield to law. Tribunal is the creation of the Act. It has to function under the provisions of the Act (See Butterworths words and Phrases legally defined 3<sup>rd</sup> Edition, Page 345).

**13.** It is argued by the learned Members of the Bar that the expression of ‘Tribunal’ as under Section 15 and Rule 6 of the Armed Forces Tribunal (Procedure) Rules, 2008 would have to be read in relation to the cause of action wholly or partly arisen. In these cases, cause of action partly had arisen in Delhi on account of rejection of the representation or petition or keeping the same pending for long period. Any other interpretation would be contrary to the principles relating to the filing of application/appeal, where the cause of action arises as contemplated under Rule 6. It is further submitted that the local jurisdiction of this Tribunal has a nexus with the cause of action. To the contrary from the side of Union of India it is submitted that in

the matter of appeal jurisdiction of this Tribunal cannot be invoked merely because the appellant chose to make statutory representation or petition to Chief of the Army/Air/Naval Staff or Central Government. Infact, for resorting to the jurisdiction of the Tribunal, the appellant has to establish a live link between the territory in which the cause of action arises and the subject matter of the appeal. For ascertaining the jurisdiction to entertain an appeal under Section 15 of the Act it is virtually to be looked into as to what is the subject matter.

Thus we hold that the order of the Chief of the Army/Air/Naval Staff or Govt. of India in the matter of conviction is not the subject of evaluation in appeal under Section 15 of the Act. So it would not confer jurisdiction or would give any cause of action. There is no statutory requirement under the Act that for the purpose of filing of the appeal, one has to adopt alternative forum for seeking redressal first from the appropriate authority.

**14.** From the arrangement made under Section 15 of the Act it is clear that it is only the findings and sentence recorded by any Court Martial subject to the confirmation by the authority concerned,

can be challenged. Dictum 'cause of action' is neither defined in the Act or in the Rules referred above but has a wide import. It has different meaning in different context, when used in the context of territorial jurisdiction it is to be inferred on the basis of bundle of facts, which if approved or admitted would make the appellant entitled to the relief claimed. In this case the approval or disapproval of the order of the Chief of Army Staff or Govt. of India in connection with the findings and sentence given by the Court, would not have any effect. Therefore that could not give any cause of action to the appellants. Reliance may be placed in the case of *Kandimalla Raghavrah and Co. Vs. National Insurance Company (2009) 7 SCC Pg.788*. Arguments were also made from the side of Bar that the jurisdiction of the Tribunal under Section 15 is not only confined to the findings and the sentence based by Court Martial but also to any matter connected therewith or incidental thereto. It is true that Tribunal has jurisdiction to try matters connected therewith or incidental to the claim, relief in question. Indeed Section 15 (1) itself provides that the Tribunal has the power to determine matters incidental to the claim arising from the punishment, sentence so awarded. It is also true that while deciding particular matter incidental

or connected to the claim or not, care should be taken neither to unduly expand or curtail the jurisdiction of the Tribunal but it has to be kept in mind that jurisdiction under Section 15 is a special jurisdiction. Incidental matters are also referred there under Section 15(6) of the Act. Reliance may be placed in the case of *Payment of Wages Inspector, Ujjain Vs. Bar Nagar Electricity Supply & Indl. Co. Ltd. and another*, AIR (1969) SC Page 590.

15. The next question arises is to how the jurisdiction of the Tribunal can be resorted on the basis of his past, present posting or on the basis of his ordinary place of residence. Armed Forces Tribunal (Procedure) Rules, 2008 have force of law. The appellant may resort to the forum on the basis of his past and present place of posting and ordinary place of residence and that appeal would be maintainable in view of Rule 6 (ibid) before that Tribunal having regard to the fact that the petitioner is the dominos litus to choose his forum in view of Rule 6 (ibid). It is further submitted that the Hon'ble Chairperson in view of the arrangement under Section 20 of the Act may, by general or specific order, transfer case or class of cases from one bench to another bench. The expression "Special Order" implies that even in

the absence of general order or interrogation of that general order the Hon'ble Chairperson may assign the cases to one or the other Bench. It is within the jurisdiction of the Hon'ble Chairperson to exercise his powers under this proviso.

**16.** Before parting with, it is necessary that the Tribunal is beholden to the Learned Amicus Curiae Sh.M.G.Kapoor, Advocate for the assistance rendered by him.

**S.S.DHILLON**  
**(Member)**

**S.S.KULSHRESTHA**  
**(Member)**

**PRONOUNCED IN THE OPEN COURT**  
**ON 23<sup>rd</sup> APRIL, 2010**