

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

**T.A NO. 467 OF 2009  
(WRIT PETITION (C) NO. 22143 OF 2005**

**BHM (NOW EX HAV) NIRMAL SINGH  
(ARMY NO. 14358224A), S/O. SWARAN SINGH  
13 FIELD REGIMENT, C/O. 56 APO.**

**PRESENT ADDRESS:**

**VILLAGE & POST OFFICE – JALALABAD  
TEHSIL – KHADUR SAHIB  
DISTT. AMRITSAR (PUNJAB)**

**THROUGH: MR.D.S KAUNTAE, ADVOCATE**

**...PETITIONER**

**VERSUS**

- 1. UNION OF INDIA, THROUGH ITS SECRETARY,  
GOVT. OF INDIA, MINISTRY OF DEFENCE,  
SOUTH BLOCK, NEW DELHI – 110 011.**
- 2. CHIEF OF THE ARMY STAFF  
ARMY HEADQUARTERS, SOUTH BLOCK,  
NEW DELHI – 110 011.**
- 3. COMMANDING OFFICER  
13 FIELD REGIMENT, C/O 56 APO.**
- 4. OFFICER IN CHARGE  
ARTILLERY RECORDS,  
NASIK ROAD CAMP (MAHARASHTRA).**
- 5. BRIGADIER COMMANDER  
7 ARTILLERY BRIGADE, C/O. 56 APO.**

6. (i) HAV/DRIVER (MT) GURMEET SINGH  
(ii) HAV/GD LAKHBIR SINGH  
(iii) HAV/GD AVTAR SINGH  
C/O RESPONDENT NO.3 AS SHOWN ABOVE.

**THROUGH: MR. ANIL GAUTAM, ADVOCATE WITH MAJ. KUMAR**

**.. RESPONDENTS**

**CORAM :**

**HON'BLE MR. JUSTICE S.S KULSHRESHTHA, MEMBER  
HON'BLE LT. GEN. S.S DHILLON, MEMBER**

**JUDGMENT**

03.02.2010

1. This petition has been brought for quashing the order of reprimand passed by the appropriate authority in the Summary Court Martial proceedings. Simultaneously, a prayer has also been made for setting aside the discharge order. In the course of arguments, it has also been submitted that the punishment of reprimand would come in the way of his promotion and, therefore, it is also required to be set aside.

2. Preliminary objection has been raised by counsel for the respondents that the petition for setting aside the order of reprimand in the SCM proceedings cannot be considered in view of the provision contained in

Section 3(o) of the Armed Forces Tribunal Act, 2007 (the Act, for brevity), which reads:

3. Definitions:- In this Act, unless the context otherwise requires,--

“(a) .....  
xxxxxxx xxxxxxxx

(o) ‘service matters”, in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), mean all matters relating to the conditions of their service and shall include---

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions;
- (iii) summary disposal and trials where the punishment of dismissal is awarded;
- (iv) any other matter, whatsoever,

but shall not include matters relating to---

- (i) Orders issued under section 18 of the Army Act, 1950 (46 of 1950), sub section (1) of section 15 of the Navy Act, 1957 (62 of 1957) and section 18 of the Air Force Act, 1950 (45 of 1950); and
- (ii) Transfers and postings including the change of place or unit on posting whether individually or as a part of unit, formation or ship in relation to the persons subject to the

- Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950).
- (iii) Leave of any kind;
  - (iv) Summary Court Martial except where the punishment is of dismissal or imprisonment for more than three months;
  - (p) 'summary disposals and trials' means summary disposals and trials held under the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950);
  - (q) 'Tribunal' means the Armed Forces Tribunal established under section 4."

**3.** From the wordings of Section 3(o)(iii), it is clear that this Court can look into service matters wherein punishment of dismissal has been awarded in SCM proceedings. Here, in this case, as has already been stated, only the punishment of severe reprimand was awarded by the appropriate authority. In the background of what is contained in Section 3(o)(iii), it is stated that it would not take away the jurisdiction of this Tribunal where a separate punishment has been provided in the definition clause viz. Section 3(p). Section 3(p) reads as under:

"3(p) 'summary disposals and trials' means summary disposals and trials held under the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950)"

4. Section 3(p) defines “summary disposal and trial”. It cannot be given the nature of substantive or procedural law. It would not in any way come in the way of specific provision contained in Section 3(o)(iii). From the factual aspects of this case, this Court has no jurisdiction to interfere with the punishment of severe reprimand awarded in SCM proceedings. Further, the arrangement under Section 3(o)(iii) of the Act does not require any interpretation. Assuming that there is any need of applying the principles of interpretation, we have to consider that whether the distinction given in Section 3(p) of the Act is used in a substantive sense. It is clear from Section 3(o)(iii) that the Legislature did not want to confer jurisdiction by way of defining ‘Summary disposal and trial’ in section 3(p). The intention of the law makers is clearly restricting the powers of Tribunal under section 3(o)(iii). The provisions of Section 3(o)(iii) do not give room for interpreting Section 3(p) as a substantive law. In this regard, it would be appropriate to refer to the decision of the apex Court in **Oil and Natural Gas Corporation Ltd v. Saw Pipes Ltd** (2003 (5) SCC 705), which held that the jurisdiction or the power of Arbitral Tribunal is prescribed under the Act and if the award is dehors the said provisions, it would be on the face of it, illegal. The decision of the Tribunal must be within the bounds and its jurisdiction conferred under the Act or the contract. In

exercising jurisdiction, the Arbitral Tribunal cannot act in breach of some provision of substantive law or the provisions of the Act.

5. It has next been contended that if several prayers are made in the petition and if one prayer cannot be entertained, cognizance of other prayers can be taken by the Court. From the facts of this case, it is clear that the petitioner was discharged from service after completion of the fixed tenure and it was fairly conceded that the order of severe reprimand would come in the way of promotion. When this Tribunal cannot look into the first prayer viz. for setting aside the severe reprimand, the second prayer since dependent upon the main prayer cannot be looked into. **The petition is dismissed, as barred by Section 3(o) (iii) of the Act.**

**(LT. GEN. SS DHILLON)**  
**MEMBER**

**(JUSTICE SS KULSHRESHTHA)**  
**MEMBER**