

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

2.

AT 103/2023 in OA (Appeal) 1442/2023 (RB, Chandigarh)

Major Chandra Kant Joshi	Applicant
Versus		
Union of India & Ors.	Respondents

For Applicant	:	Mr. Anil Gautam, Sr. CGSC
For Respondents	:	Mr. Sifikanth, Advocate with Ms. Samiksha Tiwari, Advocate

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HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

ORDER
08.12.2023

This is an application filed by the Union of India under Section 27 of the Armed Forces Tribunal Act 2007 for transfer of O.A (Appeal) No. 1442 of 2023 from the Armed Forces Tribunal, Regional Bench, Chandigarh to Armed Forces Tribunal, Regional Bench, Lucknow. It is the case of the Union of India that a co-accused in the case has filed before the Armed Forces Tribunal, Regional Bench, Lucknow and as the case of the co-accused is pending at Lucknow, this case is also to be transferred to the Lucknow Bench. It is also stated that the cause of action, the matter of investigation, cognizance, investigation of disciplinary proceedings etc. had arisen in Meerut (Uttar Pradesh), which is within the territorial jurisdiction of the Armed Forces Tribunal, Regional Bench at Lucknow.

2. On notice being issued the respondent Maj Chandra Kant Joshi has filed his reply stating that he is presently posted at 6

DOGRA, Western Command at Mamun Military Station, Pathankot Mamun Military, which falls within the jurisdiction of the Armed Forces Tribunal, Regional Bench, Chandigarh. Therefore, placing reliance on the law laid down in the case of Capt G. Vivekanand v. Union of India and others (O.A No. 460 of 2015 decided on 11.09.2015), it is stated that no case has been made out for transferring the case from Armed Forces Tribunal, Regional Bench, Chandigarh to Armed Forces Tribunal, Regional Bench, Lucknow.

3. I have considered the submissions made by the learned counsel for the parties.

4. Rule 6 of the Procedure Rules, which pertains to "place of filing application", is reproduced as under:

6. 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.

Further, Section 27 of the AFT Act gives administrative power to the Chairperson of the Armed Forces Tribunal to transfer cases from one Bench to another. However, while exercising power of transfer under Section 27 of the AFT Act, the Chairperson has to take note of various factors which include the law laid down by the Full Bench in the case of *Capt G. Vivekanand* (supra). In the case of *Capt G. Vivekanand* (supra), the issue of interpretation of Rule 6 of the Procedure Rules had come up for consideration before the Full Bench, in view of the two divergent views expressed by two different Benches.

5. After analyzing various legal aspects with regard to cause of action and the place of imitating proceedings, the opinion of the learned Full Bench was crystallized in Paragraph 71 in the following manner:

*71. In view of above discussion, in this reference we have decided only the question that, whether the litigants coming before the Tribunal have right to file the application/matters before the Bench as permissible by Rule 6 and in a case when the litigant has filed the application (matter) within the framework of Rule 6 of the Armed Forces Tribunal (Procedure) Rules, 2008 then whether, the Bench of the Tribunal, after holding that part of the cause of action has arisen within the territorial jurisdiction of the Bench as the matter is fully in any of the cause of Rule 6, still whether the Bench can refuse to entertain the application/matter brought before the Bench by the litigant? We have answered that the litigant has choice to choose any of the Benches in accordance with Rule 6 of the Rules of 2008 and the Bench has no jurisdiction in the name of exercise of discretion or **forum conveniens** to refuse to entertain the lis brought before the Bench on the ground of discretion of **forum conveniens**.*

This position of the law is same for application under Section 14 or it may under Section 15 of the AFT Act 2007, as for both, the same Rule 6 is applicable.

Finally, the conclusion drawn by the Full Bench in Para 72 of the judgment reads as under:

72. In sum and substance, we may sum up our conclusions:-

*(a) Under Rule 6 of the Armed Forces Tribunal (Procedure) Rules 2008, the applicant has statutory right to choose any of the Benches, as per any of the clauses referred under Rule 6, including his legal right to file a *lis* before the Bench within whose territorial jurisdiction the cause of action or the part of cause of action has arisen as the *lis* is covered by any of the clause of Rule 6 of the AFT (Procedure) 2008.*

*(b) The Tribunal (Benches of the Tribunal) have no jurisdiction to apply the concept of **forum conveniens** against the statutory right of the applicant, the **dominus litis**. The Rule 6 as a whole, in its language and intention is clear and unambiguous. The Tribunal is bound by the mandate of law and is precluded from speculating by first introducing an ambiguity or otherwise.*

(c) The reference is answered as above.

A perusal of the aforesaid law laid down by the Full Bench in the case of *Capt G. Vivekanand* (supra) makes it clear that the litigant has choice to choose any of the Benches in accordance with Rule 6 of the Procedure Rules for invoking the jurisdiction. The Full Bench further held that the applicant has statutory right to choose any of the Benches as per any of the clauses referred under Rule 6, including his legal right to file a *lis* before the Bench within whose territorial jurisdiction, the cause of action, in full or part,

arises. The concept of "*forum convenience*" will not apply as the litigant applicant has "*dominus litis*" in choosing the place of filing an application.

6. Keeping in view of the fact that the applicant has the right to choose the Bench where the proceedings are to be held and the applicant having chosen the Regional Bench at Chandigarh as the Bench where he wanted to prosecute the matter based on the rights available to him under Rule 6 of the Armed Forces Tribunal (Procedure) Rules 2008 i.e. his place of posting, no case has been made out for transferring the case from Armed Forces Tribunal, Regional Bench, Chandigarh to Armed Forces Tribunal, Regional Bench, Lucknow.

7. The application is dismissed.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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