

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

1.

AT 95/2023 in CA 04/2022 in OA 2740/2017 (RB Chandigarh)

Col Anup Prakash Singh Sidhu (Retd.) ... Applicant
Versus
Union of India & Ors. ... Respondents

For Applicant : Mr. Anil Gautam, Sr. CGSC
For Respondents : Mr. Rajesh Jain, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

ORDER
29.09.2023

Invoking the jurisdiction of the undersigned under Section 27 of the Armed Forces Tribunal Act 2007, this application has been filed on behalf of the respondent (Union of India) in CA No. 04/2020 arising out of OA 2740/2017 pending before the Regional Bench of this Tribunal at Chandigarh for its transfer to the Principal bench at New Delhi.

2. It is seen from the records that in Original Application bearing No. OA 2740/2017, certain directions were issued for grant of Special Family Pension and Ex-gratia lump sum compensation in respect of one IC-67530F Late Capt Anudeep Singh Sidhu. The initial claim made by the applicant was rejected by the competent authority on the ground that death of the Officer, son of the applicant was Neither Attributable to nor Aggravated by Military Service and no compensation or Special Family Pension was to be paid,

3. Thereafter, Col Anup Prakash Singh Sidhu filed an Original Application before the Armed Forces Regional Bench, Chandigarh for grant of Special Family Pension. The OA was disposed off on 10.10.2018 by a Bench of this Tribunal and the directions issued was that the respondents should process the claim of the applicant for grant of Special Family Pension, should dispose off the same keeping in view the certain decisions of the Hon'ble Supreme Court and the Policies referred to in the order.

4. By a detailed Speaking Order passed on 21.01.2022 running into more than four pages, after analyzing various issues, discussing the rule position and order was passed to say that the applicant is not entitled to the benefit. Being aggrieved by the Speaking Order passed on 21.01.2022, the applicant in OA No. 2740/2017 filed a Contempt Application before the Regional Bench of the Armed Forces Tribunal, Chandigarh under the provisions of Section 19 of the Armed Forces Tribunal Act 2007 which read as under:-

19. Power to punish for contempt.—(1) Any person who is guilty of contempt of the Tribunal by using any insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such Tribunal shall, on conviction, be liable to suffer imprisonment for a term which may extend to three years.

(2) For the purposes of trying an offence under this section, the provisions of sections 14, 15, 17, 18 and 20 of the Contempt of Courts Act, 1971 (70 of 1971) shall mutatis mutandis apply, as if a reference therein to—

- (a) Supreme Court or High Court were a reference to the Tribunal;
- (b) Chief Justice were a reference to the Chairperson;
- (c) Judge were a reference to the Judicial or Administrative Member of the Tribunal;
- (d) Advocate-General were a reference to the prosecutor; and
- (e) Court were a reference to the Tribunal.

5. In the aforesaid proceedings, certain orders were passed by the Regional Bench, Chandigarh and during the pendency of the matter, this application has been filed for transfer primarily on the ground that the issue as to whether this Tribunal under Section 19 has the powers to take action for contempt on breach of orders or direction is subjudice before a Larger Bench of this Tribunal at Principal Bench, New Delhi in the case of *Lt Col Mukul Dev Vs. R K Mathur & Ors. (CA 04/2014 arising out of OA 04/2014 (RB, Kolkata)).*

6. It is the case of the respondents apart from the fact that no contempt has been committed. The direction for taking a decision has been taken by a Speaking Order passed on 21.01.2022 and therefore no contempt is made out. The submission on merit is as the matter is subjudiced before the Larger Bench of this Tribunal at Principal Bench in New Delhi, this Contempt Application be also transferred and heard along with the Larger Bench.

7. Notices were issued to the respondents as required under the provisions of Section 27 and a detailed reply was filed and the matter has

been heard. The respondents have primarily relied upon the judgment of the Hon'ble Kerala High Court in the case of *Shihabudeen Vs. Principal Controller of Defence Accounts 2011 SCC Online Ker 4966* to say that the Hon'ble High Court of Kerala, a Constitutional Court, has held that powers of contempt are available to this Tribunal and therefore, the Tribunal can proceed in the matter. It is said that a Larger bench of this Tribunal in the case of *OA 1238/2016 Shama Kaur vs. Union of India* has held that once a Constitutional Court has adjudicated a particular issue, then this Tribunal is bound by the same. I have no doubt in accepting the aforesaid proposition but the question is as to whether the power for contempt is available or not and what would be the effect of the directions issued by the Kerala High Court in the case of *Shihabudeen* (supra).

8. Having considered the submissions made it is seen that in contempt CA 4/2014 and CA 7/2014, *Lt Col Mukul Dev Vs. Union of India*, Contempt applications were filed before the Regional Bench, Kolkata under Section 19 read with Section 29 of the Armed Forces Tribunal Act 2007 and on account of non-compliance with and breach of certain orders passed on 10.01.2014, it was pleaded that contempt action should be taken under Section 19. The issue was deliberated in detail and a Division Bench of this Tribunal in CA 4/2014 took note of the arguments advanced in the matter of power available to this Tribunal under Section 19, the law laid down by the Division Bench of the Kerala High Court in the case of *Shihabudeen*

(supra) and after detailed discussion analyzing the power under Section 19, discussing the rules and regulations various laws laid down by the Hon'ble Supreme Court and even the Constitutional debate and the submissions and report of the **Sanyal Committee** in the matter of enacting the Contempt of Court Act of 1952 subsequently replaced by the Act of 1971, a Division Bench of this Tribunal in a detailed analysis came to the conclusion and deferred with the views taken by the Kochi Bench based on the law laid down in the case of *Shihabudeen* (supra) and found that it is doubtful as to whether for the purpose of willful disobedience or non-implementation of order, contempt powers are available to this Tribunal under Section 19 is available and from Para 38 onward, the Bench has passed the following order on 15.04.2015:~

“38. In view of a well settled position of law on the subject a discussed above, the arguments that the Tribunal is a Court of Record does not deserve acceptance. Moreover, even if, for the sake of argument, the Tribunal is taken as a Court of Record, conferral of the power to punish for civil contempt would still be required. For this, reference may be made to language employed in Articles 129 and 215 of the Constitution of India:

129. Supreme Court to be a court of record.—The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

215. High Courts to be courts of record.—Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.”

(Emphasis supplied)

9. From the aforesaid, it is clear that the issue as to whether this Tribunal has powers to initiate contempt action under Section 19 for willful disobedience or non-implementation of an order passed by this Tribunal is subjudiced before the Larger Bench and judicial proprietary requires that unless the Larger Bench decides the issue, contempt proceedings should be initiated only for the limited purpose as is available under sub-Section (1) of Section 19 and nothing more.

10. Keeping in view the aforesaid, that apart, once the issue is pending before a Larger Bench, it would be in the fitness of things that this application is also transferred and heard along with CA 4/2014 by the Larger Bench.

11. Accordingly, this application is allowed. OA 2740/2017 stands transferred to this Tribunal for further proceedings.

12. The Registry (RB Chandigarh) to ensure that the entire record of OA 2740/2017, in original, is remitted to the Principal Bench at New Delhi within four weeks of the receipt of the order.

**[RAJENDRA MENON]
CHAIRPERSON**

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