

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

10.

RA 43/2023 with MA 4300/2023 in OA 466/2022

Sigmn Shinde Mohan Kalu

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

:

Mr. Astha Sharma, Advocate

For Respondents

:

Mr. Waize Ali Noor, Advocate

CORAM :

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

ORDER
12.10.2023

RA 43/2023 with MA 4300/2023

Seeking review of an order passed in a proceeding held before this Tribunal under Section 15(6) of the Armed Forces Tribunal, Act 2007 this application for review has been filed under Rule 18 of the Armed Forces Tribunal (Procedures) Rule, 2008. The provision for review has been incorporated in Rule 18 of the Armed Forces Tribunal (Procedures) Rule, 2008 empowering an applicant to file an application for review. In the substantive part of the Armed Forces Tribunal, Act 2007 neither under Section 14 nor under Section 15 is any specific power for review is conferred on the Tribunal, the power is only conferred by the rules.

2. However, Section 15 is the appellate jurisdiction conferred to this Tribunal to hear appeals against orders and decisions and findings of sentences tried by a Court Martial or a matter connected thereto or incidental thereto. The powers under Section 15 are akin

to the powers available to a Appellate Criminal Court under the Code of Criminal Procedure and the entire provision of Section 15 clearly indicates that it is an appellate forum granted for considering the punishment imposed after trial by Court Martial. That being so while exercising powers under Section 15 this Tribunal exercises criminal appellate jurisdiction with regard to issues arising out of punishments and convictions in criminal matters as is done in a criminal appeal under the code of criminal procedure. Its also a well settled principle of law that in criminal matters a criminal court cannot review its own order.

3. That being so we are of the considered view that in the matter of dismissing an application for suspension of sentence and grant of bail, the power exercised by this Tribunal was akin to the powers available under the Code of Criminal Procedure, it acted as a criminal court and therefore this application for review of an order dismissing the application for suspension of sentence and bail is not maintainable. There is also an inordinate delay for which there is no satisfactory explanation given, accordingly, RA stands dismissed both on the ground of merit and delay.

[RAJENDRA MENON]
CHAIRPERSON

[P. M. HARIZ]
MEMBER (A)