

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

SUPPLEMENTARY

1.

OA 2329/2024 WITH MA 2751/2024 AND MA 2752/2024

Col Annu Dogra	Applicant
Versus		
Union of India & Ors.	Respondents

For Applicant	:	Mr. Ajit Kakkar, Mr. Rohan Wadhwa, Ms. Archana Ramesh and Mr. Ishan Gill, Advocate
For Respondents	:	Mr. Waize Ali Noor, Advocate

CORAM

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

ORDER
16.07.2024

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 the applicant has filed this application challenging the Court of Inquiry (CoI) convened by Brig Ajay Hooda, Station Commander Headquarter 9 Corps, Yol Military Station, Dharmshala, Kangra, Himachal Pradesh, namely, Respondents No.6.

2. The applicant is a JAG officer in the Indian Army presently posted at Headquarter 40 Arty Division, Ambala. The reliefs claimed vide Para 8 of the application reads as under:-

- (a) To set aside, the court of inquiry convened vide convening order No. PC-709/1/G dated 12.08.2023 and subsequent actions emanating therefrom; including directions passed by General Officer Commanding, 9 Corps by way of which disciplinary action has been directed against the applicant vide order dated 09.01.2024.*
- (b) To set aside the suspension order 09.07.2024.*
- (c) To call upon records noting correspondence relating to this case.*
- (d) To take action against all the officials involved in illegal acts and to initiate proceedings under Sec 57 of the Army Act.*
- (e) To compensate the victim for such harassment, mental agony and humiliation suffered by her.*
- (f) To set aside all the reporting earned by applicant during the period covered under the respondents.*
- (g) To place the applicant at an appropriate vacancy suitable to her rank and seniority.*

3. The CoI into the matter has been concluded and the applicant has been suspended from duty and the lapses on part of the applicant for which the impugned action is taken reads as follows :-

- (a) Giving unauthorized entry pass to Mr. Sharath Das, utilizing her signatures and office stamp, in order to facilitate entry into the Military Station.*
- (b) Intentionally providing false identification as a sponsor on Army telephone to the on duty sentry personnel at the entry gate on multiple occasions to assist Mr. Sarath Das in entering Military Station prior to 08.08.2023.*
- (c) Improperly allowing Mr. Sarath Das overnight at her residence on multiple occasions in absence of her husband.*
- (d) Wilfully making false statement with reference to Mr. Sarath Das visit to her house and his overnight stay on*

multiple occasions with effect from December 2022 to 8th August, 2023.

(f) Falsely accusing security set up of Yol Military Station for security failure and implicating IC-61797A Lt Col A Saldanha, Officiating Commanding officer 9 Corps Provost Unit with his personnel on entry gate, for not restricting entry of Mr. Sarath Das without providing sufficient identification details of the civilian.

(g) Intentionally misleading IC-61797A Lt Col A Saldanha, Officiating Commanding Officer, 9 Corps Provost Unit by not disclosing the fact that Mr. Sarath Das was inside one of her bedrooms.

(h) Violating Station security protocols by retaining a civilian maid at her house without proper verification and documentation.

(j) Intentionally signing an unauthorized leave certificate for her buddy, Number 25122663M Lance Naik Balwinder Kumar, witness in the Court of Inquiry to proceed on leave during an investigation.

4. In exercise of the powers vested under Para 349 of the Regulations for the Army (Revised Edition) 1987, the applicant has been suspended with a pending disciplinary case against her. The applicant challenges this action on various grounds, including the competence of respondent No.8 to suspend her. Although various grounds have been raised in the petition, the official respondents, represented by Mr. Waize Ali Noor, Advocate raised a preliminary objection based on Rule 6 of the Armed Forces Tribunal (Procedure) Rules, 2008, to say that the Principal Bench of the Tribunal does not have territorial jurisdiction to handle

the matter. The entire cause of action occurred in Himachal Pradesh, within the territorial jurisdiction of the Armed Forces Tribunal, Regional Bench, Chandigarh, and thus the application should be dismissed on this preliminary objection alone.

5. Mr. Ajit Kakkar, learned counsel for the applicant, assisted by Ms. Archana Ramesh, refuted this contention. They argued that respondents No. 2 and 3 (The Chief of the Army Staff, Indian Army, Raisina Hills, New Delhi and Adjutant General (Col of JAG Deptt) South Block, New Delhi respectively) are based in Delhi, within the jurisdiction of this Tribunal. The applicant has been put under a DV Ban from the Army HQs in New Delhi, and her representations regarding the impugned action were submitted to respondent No. 3 stationed in New Delhi on 28.11.2023 and 11.05.2024. Therefore, part of the cause of action occurred within the territorial jurisdiction of this Tribunal.

6. Mr. Ajit Kakkar also referred to a letter written by the applicant on 13.07.2024, certain actions related to an attempted suicide, Whatsapp messages, and media posts about the disciplinary proceedings against the applicant.

These, according to the applicant, show the malice of the private respondent officers who are allegedly harassing and attempting to ruin the applicant's career.

7. Regarding the issue of territorial jurisdiction, learned counsel for the applicant emphasized two points, i.e., the DV Ban was issued from the Army HQ, and the representation and complaints are pending with Respondent No.3. Additionally, he referred to an interlocutory order passed by this Bench in the case of Maj Priyanka Singh vs. Union of India (OA 3664/2023 decided on 08.01.2024), where the issue was entertained by the Principal Bench. He also cited the interpretation of Rule 6 of the Armed Forces (Procedure) Rules, 2008 by a Full Bench of this Tribunal in the case of Capt G. Vivekanand Vs. UoI & Ors. (OA 460/2015 decided on 11.09.2015), arguing that the Full Bench had recorded that an applicant can invoke the jurisdiction of the Armed Forces Tribunal as the applicant, being *dominus litis* has the right to forum selection, and the said right cannot be restricted.

8. *Per Contra*, learned counsel for the respondents argued that, as far as, the DV Ban imposed on the applicant is concerned, the said is not a cause

of action or a cause of grievance for the applicant and it has got nothing to do with the relief claimed by the applicant and, therefore, AFT, PB, New Delhi does not have territorial jurisdiction on this ground. As far as, representations dated 28.11.2023 and 11.05.2024 are concerned, it is argued by learned counsel for the respondents that merely sending a representation to some authorities at New Delhi on which no orders have been passed or no action has been taken, does not give rise to any cause of action or part of a cause of action to invoke the jurisdiction of the AFT, PB, New Delhi.

9. On the contrary, learned counsel invited our attention to an order passed in the case of *Shyam Sunder vs. Union of India through Secretary, Chief of the Army Staff, New Delhi and Others*. (TA No. 515/2010 decided on 08.09.2017) (2017 SCC Online AFT 4711) and the findings recorded therein in Para 10 and 11, which reads as follows:-

10. *The larger Bench of the Principal Bench of Armed Forces Tribunal has also considered this controversy in OA No. 460/2015 Capt G Vivekanand v. Union of India decided on 11.09.2015, wherein the larger bench after considering the issue at length has concluded as under:-*

72... (a) *Under the 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 or 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 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.”

11. Thus, the finding of the full bench is clear that the applicant being the dominus litis has a right of forum selection but such right is restricted only to the benches where under the provisions of rule 6, he has a choice to file the application. Such as where cause of action arisen, or he was last posted or he was posted the place where at the time of filing the application or at a place where he is residing after retirement. Admittedly, none of the above, conditions are in existence in this case to bring the case within the territorial jurisdiction of this Tribunal.

So also the judgment of the Hon'ble Supreme Court in the case of Kusum Ingots and Alloys Ltd. Vs. Union of India (reported in AIR (2004) 6 SCC 254) to submit that every action must be based on a cause of action. The AFT (PB) New Delhi will not have jurisdiction unless part or all of the cause of action arises within its territorial jurisdiction.

10. After hearing the learned counsel for the parties extensively on various issues at this stage the preliminary objection raised by the respondents needs to be considered, therefore, in this order, we are confining our decision mainly on the issue of territorial jurisdiction raised as a preliminary objection. Although various merits of the case, including allegations of mala fides and harassment of the applicant,

were discussed, and proceedings were held in camera at the applicant's request to avoid embarrassment. We are of the considered view that, it is not appropriate to address these arguments at this stage. Our focus is solely on whether this Bench has territorial jurisdiction to handle the matter.

11. The Armed Forces Tribunal Act, 2007, gives jurisdiction to this Tribunal to deal with issues stipulated in Section 14 and 15 and the procedure for dealing with the issues are laid down in the Rules framed by virtue of the powers vested in the Central Government under Section 41 of the Act. The Armed Forces Tribunal (Procedure) Rule, 2008 deals with the procedural aspects pertaining to hearing of matters by this Tribunal. The Rule 6 therein prescribes the place of filing of an application and for the sake of convenience, we reproduce Rule 6 herein under:-

“Rule 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."

12. From the aforesaid rule, it is very clear that an application must be filed by an applicant within the registry of the Bench that has jurisdiction over the applicant's current or last posting, or where the cause of action arose, either wholly or in part. However, the proviso to this rule allows the Chairman to entertain an application filed with the Registrar of the Principal Bench and to order that the application be heard and disposed of by the Bench with the appropriate jurisdiction.

13. Additionally, under the provisions of Rule 6(2), apart from the places designated under sub-rule (1), a person who is no longer in service due to retirement, dismissal, discharge, etc., can choose to file the application with the Registrar of the Bench within whose jurisdiction the person resides at the time of filing. Therefore, it is clear that the place for filing an application and the issue of territorial jurisdiction are specifically laid down in the aforesaid rule. This rule was interpreted by a Full Bench of this Tribunal in the case of Capt G. Vivekanand (supra), and the reference made to the

Larger Bench was answered by the Bench on 11.09.2015 and in Para 72, the conclusion was summarized as follows:

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

(a) *Under the 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 form conveniens against the statutory right of the applicant, the dominus litis. The Rule 6 as a whole, 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.*

14. The said judgment was relied upon by learned counsel for the applicant to canvass a contention that the applicant is *dominus litis* and, therefore, the applicant has a right to invoke the jurisdiction of the Principal Bench at New Delhi. We find from the judgment relied upon by Mr. Waize Ali Noor, learned counsel for the respondents in the case of Shyam Sunder (supra) that this issue has been specifically answered by the Bench in Para 10 and 11 of the order in the following manner:-

10. *The larger Bench of the Principal Bench of Armed Forces Tribunal has also considered this controversy in OA No. 460/2015 Capt G Vivekanand v. Union of India decided on 11.09.2015, wherein the larger bench after considering the issue at length has concluded as under:-*

72... (a) *Under the 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 or Rule 6 of the AFT (Procedure) 2008.

(b) The Tribunal (Benches of the Tribunal) have no jurisdiction to apply the concept of form conveniens against the statutory right of the applicant, the 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.”

11. Thus, the finding of the full bench is clear that the applicant being the dominus litis has a right of forum selection but such right is restricted only to the benches where under the provisions of rule 6, he has a choice to file the application. Such as where cause of action arisen, or he was last posted of he was posted the place where at the time of filing the application or at a place where he is residing after retirement. Admittedly, none of the above, conditions are in existence in this case to bring the case within the territorial jurisdiction of this Tribunal.

14. Based on the findings recorded by a Coordinate Bench of this Tribunal while interpreting the mandate of the Full Bench in the case of Capt G. Vivekanand (supra), the principle has been clearly established that, although an applicant may have *dominus litis* in the matter of forum selection, such a right is restricted by the provisions of Rule 6. The applicant has the choice to file an application only at places where the cause of action has wholly or partially arisen, where he was last posted, or where he was posted at the time of filing the application. If none of the conditions stipulated in Rule 6 are met, the Bench whose jurisdiction is invoked will not have territorial jurisdiction.

15. This legal principle has been clearly elucidated in Para 11 as detailed above. Analyzing the facts of the case against this backdrop, it is evident that, when the applicant invoked the jurisdiction of this Tribunal on 12.07.2024, she was neither posted within the territorial jurisdiction of the Principal Bench nor attached to any office or department within the territorial jurisdiction of this Bench. Moreover, the entire cause of action arose within the territorial jurisdiction of the Armed Forces Tribunal, Regional Bench, Chandigarh, which covers the state of Himachal Pradesh.

16. Merely because a DV Ban was imposed on the applicant by Army HQ, New Delhi, the Principal Bench will not have jurisdiction, as the issue of the DV Ban is not a matter of challenge or dispute in this application. Furthermore, merely submitting a representation to some officers in New Delhi does not give rise to a cause of action to invoke the jurisdiction of the Bench. Upon a combined reading of the law laid down by the Full Bench in the case of Capt G. Vivekanand (supra) and the principles based on the same, as culled out by a Coordinate Bench of this Tribunal in the case of Shyam Sunder (supra), we are of the considered view that the ingredients necessary for attracting the requirement of

Rule 6 are not available for invoking the jurisdiction of this Bench. Therefore, there is substantial force in the preliminary objection raised by the respondents.

17. During the course of the hearing, learned counsel invited our attention to the order passed on 08.01.2024 by this Bench in the case of Maj Priyanka Singh (supra). However, we find that in the said case, the issue raised before us today was not considered. On the contrary, the issue in that case concerned the attachment of an officer and the interpretation of the provisions of the Armed Forces Tribunal Act, 2007, and Section 3(o) thereof, which pertain to this Tribunal's authority to entertain applications challenging the transfer and posting of officers, including changes of unit or posting location. The issue raised in the preliminary objection was not addressed in the case of Maj Priyanka Singh (supra).

The Section 3(o) of the AFT Act, 2007, reads as under:-

3(o) "service matter", 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) *and 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).*

(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 relations 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;*

18. Accordingly, without delving into the controversy on its merits and without expressing any opinion on the merits of the matter, some of which were canvassed before us, we dismiss the application for lack of territorial jurisdiction and grant the applicant liberty to invoke the jurisdiction of an appropriate Regional Bench with territorial jurisdiction to deal with the matter.

19. In view of the above, the OA stands disposed of.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN C.P. MOHANTY]
MEMBER (A)

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