

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

24.

OA (Appeal) 2544/2024

Ex Nk (Clk) Surendra Singh Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Sandeep Kumar, Advocate
For Respondents : Dr. V. S. Mahndiyani, Advocate

CORAM

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

ORDER
31.07.2024

OA (Appeal) 2544/2024

Calling in question tenability of the impugned order, necessary action taken by the respondents punishing him with punishment of reduction to the lower rank on basis of the findings recorded in a Summary Court Martial, applicant has filed this appeal invoking jurisdiction of this Tribunal under Section 15 of the Armed Forces Tribunal Act, 2007.

2. Apart from challenging the Summary Court Martial on merit, it is the contention of the applicant that the action of the respondents in punishing the applicant by erroneously framing a charge under Section 38(1) of the Army Act, 1950 is unsustainable in law in as much as even if the charge and the allegations of the offence will not come under Section 38(1) on the contrary it would be coming under Section 39 of the Army

Act, 1950. Be it as may be on the aforesaid ground, the punishment imposed by the SCM, i.e., reduction in rank has been challenged by the applicant.

3. Respondents have raised a preliminary objection with regard to maintainability of this application and by referring to the jurisdiction available to this Tribunal for dealing with the service matters and the definition of service matters as detailed in Section 3(o) argued that under the definition of service matter only such punishments imposed after the SCM as are contemplated in the second part of the definition under the heading 'but shall not include matters vide item (i) to (iv)' debars jurisdiction of this Tribunal to deal with the matter and as the subject matter of the issue in question in the present appeal falls under clause (iv) thereto this Tribunal has no jurisdiction in the matter.

4. Having heard learned counsel for the parties on the issue, we find that the Tribunal has been created for deciding matters as are specified as service matters and service matters is defined under Section 3(o) of the Armed Forces Tribunal Act, 2007 as under:-

“ (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.”

5. From the aforesaid it is seen that the second part of the definition deals with subjects which are not included within the meaning of service matters and clause (iv) of the aforesaid Section clearly provides that all punishments imposed after Summary

Court Martial except the punishment of dismissal from service or imprisonment for more than three years did not fall within the ambit of service matters and are in fact excluded from the definition of service matters.

6. That being so, the punishment of reduction in rank imposed upon the applicant after the Summary Court Martial is excluded from the definition of service matters as indicated hereinabove and therefore this Tribunal does not have jurisdiction to deal with the matter as Section 14 of the Armed Forces Tribunal Act, 2007 confers jurisdiction power and authority to this Tribunal only to deal with such service matters as are contemplated in the Section 3(o) of the Army Act, 1950.

7. Accordingly, finding the preliminary objection raised by the respondents to be sustainable in law and fact, we uphold the same and dismiss the application with liberty to the applicant to challenge the impugned action in accordance with law before the appropriate forum which has jurisdiction to deal with the matter.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

Priya