

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

51.

OA 468/2024

Ex NC (E) Zahoor Ahmad Beigh	Applicant
Versus		
Union of India & Ors.	Respondents

For Applicant : Mr. Ajit Kakkar, Advocate
For Respondents : Dr. V. S. Mahndiyan, Advocate

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HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
09.02.2024

OA 468/2024

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, applicant has called in question an administrative order of dismissal from service passed in terms of Section 20 (3) of the Air Force Act, 1950 read along with Rule 18(1) of the Air Force Rule, 1969.

2. It is the grievance of the applicant that in exercise of the administrative powers, the respondent without considering the applicant's show cause notice and the legal implications have taken action against the applicant which is not warranted in law in view of the various grounds ~~canvassed~~ in Para 5 of the application. However, at the time

of admission when the matter was taken up today, learned counsel for the respondents, Mr. V. S. Mahndiyan, on advance notice pointed out that as administrative action for dismissal taken against the applicant under Section 23 of the Air Force Act, 1950, the applicant has a statutory remedy under the service privileges available to him under Chapter V of the Air Force Act, 1950 to seek departmental remedy under Section 26 or 27 of the Air Force Act, 1950 and in view of the provision of Section 22 of the Armed Forces Tribunal Act, 2007, he cannot invoke the jurisdiction of this Tribunal without exhausting the alternate remedy. Referring to Para 6 of the pleadings of the applicant, it is the objection of the respondents that the applicant without availing statutory remedy available under the Air Force Act, 1950 has made various averments to the effect that he has availed all the remedies available.

3. That apart, respondents also take objection to the territorial jurisdiction in the matter on the ground that the order impugned is passed by AOC-IN-C, HQ EAC, IAF, Shillong and therefore the jurisdiction to deal with the matter is with the Regional Bench, Guwahati or Calcutta as the case may be and without ... Merely on the basis of some addresses

given by the applicant showing him to be a resident of Delhi, the jurisdiction cannot be invoked here at the Principal Bench.

4. Learned counsel for the applicant refuted the aforesaid and argued that the applicant had replied to the show cause notice and having the same not been considered in accordance with law, the applicant does not have any remedy available but to approach this Tribunal. He therefore, argues that the alternate remedy available is nothing but something like a mere formality, no useful purpose will be served by availing this alternate remedy.

5. We have heard the learned counsel for the parties and perused the records. From the records it is seen that the show cause notice was issued to the applicant on 6th January, 2022 which was served upon him on 18th January, 2022 and the main allegations in the show cause notice reads as under:-

“ And Whereas, based on inputs on your involvement in adverse cyber activities, your ICT device (Smartphone Redmi Note 5 Pro, IMEI No. 860575046353207/15) was seized and subjected to forensic analysis which revealed contact with Pak Nationals on social media, use of banned/Pak based applications, presence of service related information, your involvement in undesirable activities including improper relationship outside

marriage and presence on WhatsApp groups with foreign nationals and service personnel.”

6. The applicant's reply to show cause notice was considered and rejected and the applicant has been dismissed from service by passing a detailed speaking order.

7. Admittedly, the impugned action is taken in the terms of Section 20(3) of the Air Force Act, 1950 which gives power to the competent authority as detailed in the Section for dismissal, removal or reduction by Chief of the Air Staff and an officer of the Air Force. Under the Chapter V pertaining to service privileges under Section 26, the following remedies have been provided under the statute:-

“Remedy of aggrieved airman.- (1) Any airman who deems himself wronged by any superior or other officer may, if not attached to a unit or detachment, complain to the officer under whose command or orders he is serving; and may, if attached to a unit or detachment, complain to the officer commanding the same.

(2) When the officer complained against is the officer to whom any complaint should, under sub-section (1), be preferred, the aggrieved airman may complain to such officer's next superior officer, and if he thinks himself wronged by such superior officer, he may complain to [the Chief of the Air Staff].

(3) Every officer receiving any such complaint shall make as complete an investigation into it as may be possible for giving full redress to the complainant; or, when necessary, refer, the complaint to superior authority.

(4) Every such complaint shall be preferred in such manner as may from time to time be specified by the proper authority.

(5) The Central Government may revise any decision by [the Chief of the Air Staff] under sub-section (2), but subject thereto, the decision of [the Chief of the Air Staff] shall be final.”

8. That being so, in our considered view the applicant, thus, have an alternate departmental remedy of invoking the jurisdiction before the higher authorities under Section 26 of the Air Force Act, 1950. Section 21 of the Armed Forces Tribunal Act, 2007 clearly contemplates that application filed before this Tribunal under Section 14 or 15 of the Armed Forces Tribunal Act, 2007 shall not be ordinarily admitted or entertained until or unless all the departmental remedies available under the Army Act, 1950, Navy Act, 1957 and the Air Force Act, 1950 are not exhausted.

9. Admittedly, the applicant has an inefficacious departmental remedy under the statute namely, Air Force Act, 1950 and the applicant has not exhausted the said remedy. There are serious disputed question of fact involved in the matter and when a detailed statutory remedy is available to the applicant which includes ‘power of revision of decision to the central government or the chief of the Air Staff’.

10. However, in our considered view looking to the nature of allegations leveled against the applicant and the totality of

the facts and circumstances, the applicant should first exhaust the departmental remedies available under the Statute and then only invoke the jurisdiction of this Tribunal.

11. As far as the territorial jurisdiction is concerned, we, for the present, are not inclined to dismiss the application on that ground. The said question is left open to be considered in the view on the next date.

12. Keeping in view the aforesaid, it is directed that treating the application to be an appeal filed by the applicant under the statute provided in the Air Force Act, 1950 the same be placed before the competent authority for consideration and competent authority shall decide the same in accordance with law by passing an speaking order within a period of three months from receipt of a copy of this order along with a copy of the application which shall be filed by the applicant before the competent authority.

13. With the aforesaid, the application stands disposed of.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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