

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

15.

OA 5097/2024

Hav (DMT) Sanjay Kumar Tiwari Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Ajit Kakkar, Advocate
For Respondents : Mr. Waize Ali Noor, Advocate

CORAM

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

ORDER
10.12.2024

OA 5097/2024

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, applicant has called in question the order dated 02.02.2024 whereby on the basis of Summary Trial conducted into the tentative charge sheet, he said to have been imposed punishment of severe reprimand with 14 days fine.

2. Respondents have raised a preliminary objection and submit that the punishment in question have been imposed on basis of Summary Trial and the same does not fall within the jurisdiction of this Tribunal.

3. It is the case of the respondents that the punishment imposed on the basis of Summary Trial/Summary Court

Martial does not come within the purview of the service matters as defined under Section 3(O) of the Armed Forces Tribunal Act, 2007 and therefore the same is liable to be dismissed. In support of their contention they invite our attention to a recent order passed by this Tribunal on 08.11.2024 in the case of of Nk MT Mari Muthu J thru his wife Smt Pandi Meena Vs. Union of India and Ors. (OA 4603/2024) wherein same objections have been upheld. Admittedly, the punishment in question based on Summary Trial is severe reprimand and fine of 14 days.

4. Service matters are defined under Section 3(O) of the Armed Forces Tribunal Act, 2007 and it reads as under:-

“3. Definitions.

xxx xxxx xxxx

Xxx xxxx xxxx

(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 definition it is seen that punishment imposed after Summary Trial come within the jurisdiction of this Tribunal only if punishment is dismissal from service or rigorous imprisonment more than 03 months, all other

punishments imposed after Summary Court Martial do not come within the purview of the service matters as per the definition in Section 3(O) of the Armed Forces Tribunal Act, 2007 and therefore it is rightly pointed out by the respondents that this Tribunal does not have jurisdiction to deal with this matter.

6. This issue has also been considered by us in the case of Nk MT Mari Muthu J thru his wife Smt Pandi Meena Vs. Union of India and Ors. (OA 4603/2024) on 08.11.2024 and after taking note of the definition of the service matters as detailed in Section 3(O) of the Armed Forces Tribunal Act, 2007, in Para 5 and 6 of the order passed in aforesaid mentioned case, the issue has been decided in the following manner:-

“5. From the aforesaid, it is seen that the punishment imposed after Summary Trial come within the purview and jurisdiction of this Tribunal only if the punishment is of dismissal from service or imprisonment for more than three months. All other punishments imposed after Summary Trial/Summary Court Martial is beyond the purview of this Tribunal. In the present case, the punishment imposed after the Summary Trial/Summary Court Martial is that of censure and it is neither dismissal nor imprisonment for more than three months. That being so, this Tribunal does not have the jurisdiction to deal with this matter.

6. Accordingly, the preliminary objection raised by the respondents is upheld and the OA is dismissed with liberty to the applicant to take recourse to such remedy as may be available under law.”
7. In the present case also the punishment in question after Summary Trial comes within the purview of matters not included in the definition of Section 3(O) of the Armed Forces Tribunal Act, 2007 and therefore we have no option but to uphold the preliminary objections raised by the respondents and dismiss this application with liberty to the applicant to ventilate his grievance in accordance with law before the appropriate adjudicatory forum having jurisdiction in the matter.
8. OA stands dismissed with the aforesaid liberty.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

/Priya/