ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL BENCH AT CHANDIMANDIR

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(1) **TA 23 of 2015** (arising out of OA 408 of 2015)

Major Praveen Kumar …… Petitioner(s)
Vs
Union of India and others …… Respondent(s)

(2) **OA (Appeal) 763 of 2015**

Pradeep Singh Negi …… Petitioner(s)
Vs
Union of India and others …… Respondent(s)

(3) **OA (Appeal) 764 of 2015**

Mallan Pappu …… Petitioner(s)
Vs
Union of India and others …… Respondent(s)

(4) **OA (Appeal) 765 of 2015**

Hrishikesh Kumar …… Petitioner(s)
Vs
Union of India and others …… Respondent(s)

(5) **OA (Appeal) 766 of 2015**

Rajpal Singh …… Petitioner(s)
Vs
Union of India and others …… Respondent(s)

(6) **OA (Appeal) 768 of 2015**

Shabbir Ahmed Khaji …… Petitioner(s)
Vs
Union of India and others …… Respondent(s)

(7) **OA (Appeal) 769 of 2015**

RP Bhagat …… Petitioner(s)
Vs
Union of India and others …… Respondent(s)

(8) **OA (Appeal) 770 of 2015**

Alok Ranjan Parida …… Petitioner(s)
Vs
Union of India and others …… Respondent(s)

(9) **OA (Appeal) 771 of 2015**

Madan Kumar Ullamgunta …… Petitioner(s)
Vs
Union of India and others …… Respondent(s)

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For the Petitioner (s) : Mr Rajiv Manglik, Advocate

For the Respondent(s) : Mr. Gurpreet Singh,Sr.PC.
Mrs. Geeta Singhwal, Sr.PC.
Mr.Karan Nehra, Sr.PC.
Mr Sandeep Bansal CGC
Mrs Sangeeta Dubey, CGC
Mr.Rajesh Sehgal, CGC
Mr.Vibhor Bansal, CGC.

Coram: Justice Prakash Krishna, Judicial Member.
Lt Gen DS Sidhu (Retd), Administrative Member.

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ORDER
22.01.2016

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Nine petitioners jointly filed OA No. 408 of 2015 before the Armed Forces Tribunal, Principal bench at New Delhi. The Principal Bench, New Delhi, by the order dated 27th May, 2015 came to the conclusion that the matter is cognizable by Armed Forces Tribunal, Regional Bench Chandigarh and therefore, transferred the petition to this Tribunal. When the matter was taken up at Armed Forces Tribunal, Regional Bench Chandigarh, the learned counsel for the petitioners

sought permission to withdraw the present petition qua petitioners No. 2 to 9 with liberty to file a fresh as it suffered from technical defects. The permission prayed for was granted by the order dated 1st July, 2015. Thereafter, separate eight petitions have been filed by all of them. These petitions were heard together and are being disposed of by a common judgment as jointly agreed by the learned counsel for the parties.

2. Arguments were heard with reference to TA No. 23 of 2015 (arising out of OA No. 408 of 2015), therefore, we are noticing the facts from the said petition. The said petition has been filed claiming the following reliefs:

> "(i) To call for the records of the case and peruse the same;
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> (ii) To declare the action of the respondents as illegal, unjust and illegal;
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> (iii) To consider the ultimate action of trial of the appellants by GCM on the charge contained in the tentative charge sheet dated 28.11.2014 as barred by limitation under section 122 of the AA;
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> (iv) To quash and set aside tentative charge sheet dated 28.11.2014;
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> (v) To direct the respondents to revoke the attachment of the appellants, lift the DV ban and the appellants be sent back to his unit for normal duties; and
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> (vi) To pass such other and further orders which their Lordships may deem fit and proper in the existing facts and circumstances of the case.
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> **Interim Relief**:
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> In view of the averments made in paras 4 and 5 of the OA and the annexures annexed thereto this Hon'ble Tribunal

> may be pleased to stay the further proceedings of recording of Summery of Evidence/Additional Summary of Evidence and further actions thereto during the pendency of the present OA and to enlarge the appellant on bail and direct the respondents to send back the appellants back to their unit for normal working during the pendency of the present OA."

3. At the very outset, the learned counsel appearing on behalf of the respondents raised a preliminary objection in view of Section 15 of the Armed Forces Tribunal Act, 2007 (for short the 'AFT Act') with regard to maintainability of the petitions. Elaborate arguments were advanced by the learned counsel for both the parties on the question of maintainability of the petitions. By the present order, we propose to dispose of the said issue as a preliminary objection.

4. All these petitions relate to an incident which took place on 25th December, 2010. In connection with the said incident, all these petitioners were detained and also arrested for an offence under Section 302 of Ranbir Penal Code and FIR has been registered and the matter is being investigated. In the said incident, Gunner (Driver Mechanical Transport) P Janardhan of 168 Field Regiment died. Briefly stated, the Court of Inquiry proceedings are on. Being aggrieved, the present petitions have been filed for the reliefs already reproduced above.

5. In this background of facts, the learned counsel for the petitioners submitted that the petition is maintainable under Section 15 of the AFT Act. The submission is that even if Court Martial has not

yet been convened, this is a matter connected with Court Martial proceedings and, therefore, an appeal would lie within the meaning of Section 15 of the AFT Act. The matter is covered by the phrase used "any matter connected therewith or incidental thereto". He also tried to impress upon us that the present proceeding is nothing but an abuse of the process of the Court, inasmuch as barred by time. The learned counsel for the petitioners has placed reliance upon certain judgments which will be discussed at the appropriate stage.

6. In reply, the learned counsel for the respondents submits that an appeal would lie only under section 15(2) of the AFT Act. Elaborating the argument, it was submitted that any person aggrieved by an order, decision, finding or sentence awarded by a Court Martial may prefer an appeal. In the present case, no order, decision, finding or sentence has yet been passed by Court Martial, therefore, the present petitions are premature. It was submitted that the proceedings at this stage are under Rule 24 of the Army Rules and the Commanding Officer has yet to apply his mind on the evidence recorded as summary of evidence as to what recourse he should take as permissible under Rule 24 of the Army Rules 1954. To put it simply, no convening order to convene the Court Martial has been passed and as such, no interference at this stage of proceeding under Section 15 of the AFT Act is permissible under law.

7. Considered the respective submissions of the learned counsel for the parties and perused the judgments referred by them. The learned counsel for the petitioner has placed reliance upon a judgment of Delhi

High Court in ***WP(C) No. 1755 of 2013 'Maj Saurabh Saharan v. Union of India and others"*** decided on **19.03.2013**. Particular reference was made to paragraph 10 of the judgment, which is reproduced below for the sake of convenience:

> "The terminology used in Section 15(1) makes it clear that the Tribunal shall exercise all jurisdiction, powers and authorities in relation to appeal against any order, decision, finding or sentence passed by a Court Martial or any matter connected therewith or incidental thereto. In other words regardless of whether under Section 153 of the Army Act has confirmation been done or not, the legality of the proceeding leading up to the imposition of a sentence, is open to question before the Tribunal; and latter would be within its rights to examine and pronounce upon it. Likewise, the power conferred under Section 15(3) is not constrained by any consideration of pendency of statutory remedies or procedures like Section 153 and 164 of the Army Act. In this view of the matter, this Court has no doubt that the Tribunal possesses the jurisdiction to decide upon the legality of the proceedings and procedure adopted by the court martial, irrespective of whether or not confirmation had taken place. Likewise, it should have, in the opinion of this Court, at lease in this case, examined the merits of the application for bail, having regard to the fact that the petitioner had remained in custody for about 340 days."

8. It may be noted that in that case the Tribunal had dismissed the OA by the order impugned before the Delhi High Court. In that case, a final verdict holding the petitioner 'guilty' was passed and the petitioner was in custody. Challenging the legality of the Court Martial proceedings, OA was filed before the AFT which was rejected. The point we want to bring home is that, there was a judgment by the Court

Martial which was subject-matter of OA before the AFT, which is not so in the present case.

9. Next reliance was placed upon a judgment of Armed Forces Tribunal, Principal Bench, New Delhi in ***OA No. 549 of 2010 "Col Narendra Kumar Yadav v. Union of India and others"*** *decided on* ***22.09.2010.*** In that case, OA was filed for setting aside the letter dated 18th August, 2010 read in conjunction with letter 1st September, 2010, whereby the applicant therein was summoned as a witness for ongoing Court of Inquiry which was convened for compliance of Army Rule 180. In this factual background, the petition was entertained by the Tribunal. We have gone through the relied upon judgment of the Tribunal and find that the point as to whether such petition is maintainable or not, was not put to issue and as such the Tribunal had no occasion to adjudge the issue. Therefore, no assistance can be drawn from the said judgment of the Tribunal. Strong reliance was placed by the learned counsel for the petitioners on a judgment given by AFT Kolkata Bench in ***OA (Appeal) No. 02 of 2014 "Lt Col Virender Singh v. Union of India and others"*** *decided on* ***7th August, 2014***. In this case, a tentative charge-sheet was prepared and served after completing the hearing of charges and recording of Summary of Evidence. The petitioner therein was issued a letter intimating him that a General Court Martial is likely to be convened against him and he could give the name of the defending officer. On the fact situation, the matter was examined by the Tribunal and the Tribunal followed the judgments

given by the Guwahati High Court and Delhi High Court with regard to interpretation of Section 15 of the Act to the effect that even pre-trial decisions of the authorities with regard to Court of Inquiry, Summary of Evidence or tentative charge-sheet would come within the purview of the interpretation "or any matter connected therewith or incidental thereto". For the sake of convenience, paragraph 18 of the judgment is reproduced below:

> "Having considered the matter carefully, we are inclined to follow the decisions of the Hon'ble Guwahati High Court, as also of Hon'ble Delhi High Court with regard to interpretation of Section 15 of the Act to the effect that even pre-trial decisions of the authorities with regard to court of inquiry, summary of evidence or tentative charge sheet stage, would come within the purview of the expression " or any matter connected therewith or incidental thereto" and in that case an appeal calling in question such decisions can also be appealed against before this Tribunal under section 15 of the Act."

10. The learned counsel for the respondents on the other hand submitted that so far as AFT Regional Bench Chandigarh is concerned, this issue is no longer *re integra* and has been finally adjudicated upon in ***OA (Appeal) No. 384 of 2015 "Col Rajesh Mehta v. Union of India and others" decided on 04.08.2015***. A bare perusal of the aforesaid judgment would show that the Tribunal considered the judgment given by the Delhi High Court in the case of **Major Saurabh Sharan v. Union of India and others** decided on 19.03.2013 and the judgment of AFT Kolkata Bench rendered in the case of ***"Lt Col Mukesh Baboo v.***

Union of India and others" decided on 13.10.2010 and after reproducing Section 15 of the AFT Act, has held as follows:

> *"8.* The conjoint reading of the above clearly shows that this section specifies the jurisdiction, powers and authority to be exercised by the Tribunal in relation to the matters of appeal against "any order, decision, finding or sentence" passed by the Court Martial or "any matter connected therewith or incidental thereto". Whereas sub section (2) specifies the right to any aggrieved person to prefer an appeal against an order, decision, finding or sentence passed by a Court Martial.
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> 9. The words "**Any Order**" and "**Any matter connected therewith or incidental thereto**" occurring in sub section (1) of Section 15 requires to be seen in the context these are used. As we understand, these words cannot be read in isolation but when read in the whole context it supplies a complete meaning and intention of the Legislature. In fact the words 'any matter connected with or incidental thereto' are referable to Court martial proceedings i.e. „ any order" or necessary orders passed by the Court Martial in certain context which are not of a casual nature, to which a challenge can only be made by an aggrieved person in appeal and not to the orders passed by the Commanding Officer or GOC-in-C in respect of the framing of charge(s) which is/ are of course not framed or ordered by the Court Martial as per the Army Act.
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> 10. Therefore, in our considered opinion "any order" passed before the initiation of the Court Martial by any other authority does not fall or could be assailed in appeal under Section 15 of the Act."

11. We could lay our hand to yet another previous judgment of Chandigarh Bench in ***OA No. 2264 of 2013 "Shri Narain v. Union of India and others"*** decided on ***03.03.2014*** wherein after considering Sections 14 and 15 of the Act it has been held that unless any order,

decision, finding or sentence is passed by the Court Martial against the petitioner, appeal would not lie. Relevant paragraphs 9,10, and 11 are reproduced below:

> ”9. A joint reading of Sub-section (1) and Sub-section(2) would show that the power of the Tribunal is in respect of an order, decision, finding or sentence passed by Court Martial. Two things follow; First, there should necessarily be an order, decision, finding or sentence and secondly, the order, decision, finding or sentence be passed by Court Martial. Admittedly, by means of present petition, the petitioner has not sought quashing of any order. He has sought at the most quashing of charge-sheet which does not fall within the ambit and scope of either Sub-section(1) or Sub-section (2) of Section 15.
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> 10. Section 14 of the Armed Forces Tribunal Act defines jurisdiction, powers and authority in service matters of the Tribunal. Its Sub-section (1) expressly excludes its jurisdiction in respect of jurisdiction exercised by the High Court and of Supreme Court under Article 226 and 227 of the Constitution of India. In this situation, the other reliefs seeking certain directions through this petition which are in the nature of command or in the nature of writ of mandamus, the Tribunal does not possess any such power.
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> 11. The learned counsel for the petitioner could not dispute as a fact that till date there is no order, decision, finding or sentence, if any, passed by the Court Martial against the petitioner. The existence of any order, sentence etc. passed by Court Martial is sine qua non for invoking the appellate jurisdiction of the Tribunal. The conferment of appellate power pre supposes existence of an adverse order with which the petitioner/appellant may feel aggrieved. The submission that the present case is covered within the residuary clause “any matter connected therewith or incidental thereto” has no merit. On a simple reading of this clause also, it is difficult to agree with the submission of the learned counsel for the petitioner. The matter as it stands today yet to reach before Court Martial.”

12. Much reliance was placed by the learned counsel for the respondents on the latest judgment delivered by Principal Bench passed in ***OA No.176 of 2015 "Hav Sham Das D v. Union of India & Ors" decided on 07.04.201.*** In this case, the Principal Bench has examined the various judgments, including that of Delhi High Court given in the case of **Maj Saurabh Saharan v. Union of India and others** [WP(C) No. 1755/2013 decided on 19.03.2013] and of Apex Court in ***Chief of Army Staff v. Major Dharam Pal Kukrety (1985) 2 SCC 412*** as well as aims and objects of the AFT and concluded that appeals can be preferred against final order of Court Martial. It concluded that "*it is inconceivable that the legislature intended to make each and every order/decision passed or direction given by a Court Martial during the course of trial, appealable under sub-section (1) of Section 15 of the Act particularly when the power of the confirming authority to satisfy itself as to the correctness, legality or propriety of the order passed or as to the regularity of any proceeding to which the order relates remains untouched and unaffected*."

13. Prima facie, there appears to be some divergence of opinion among the High Courts and the Armed Forces Tribunals but so far as the present appeal is concerned, none of the cases cited by the learned counsel for the petitioners is even near to the facts of the case even remotely. There was some kind of order in those cases, at least, which

is not so here. Even the impugned charge sheet is not final but tentative.

14. The present appeal has been filed for quashing the tentative charge-sheet, meaning thereby the charge sheet has not yet been finalized. It was rightly pointed out by the learned counsel for the respondents that the matter is still at the stage of investigation and whether the matter should be proceeded with, Court Martial is to be convened or not, still rests with the Commanding Officer under Rule 24 of the Army Rules. We find great substance in the aforesaid argument of the learned counsel for the respondents for the reasons that till date, by any stretch of imagination, it can be said that any order adverse to the petitioners even remotely has been passed. The other aspect of the case is that whatever may be judicial divergence of opinion, the judgment given by the AFT Delhi in Hav Sham Das D's case (supra) has been confirmed by the Apex Court in Criminal Appeal (D) No. 16040 of 2015 by the judgment dated 03.07.2015. It is important to note that the Apex Court entertained the criminal appeal by granting the leave and the Special Leave to Appeal was converted into appeal and thereafter it dismissed the appeal on merits. Meaning thereby, the judgment in the case of ***Hav Sham Das D*** stood confirmed by the Apex Court. Thus, the judgment given in the case of ***Hav Sham Das D*** holds the field and in terms of the said judgment the present appeal is not maintainable.

15. At this juncture, the learned counsel for the petitioner submitted that the matter requires re-consideration by a larger Bench. The submission is that the Tribunal has wrongly interpreted phrase "any other matter". We are not at all impressed by the said argument for the reasons more than one. Firstly, the judgment of the AFT Delhi stood confirmed by the Apex Court. Secondly, so far as the Chandigarh Bench is concerned, the consistent view of this Tribunal has always been that an appeal would lie only against the final order. Even otherwise also, in view of Section 15(2) of the AFT Act, an appeal would lie only against an order, decision, finding or sentence passed by the Court Martial and not otherwise. Sub-section (1) and (2) of Section 15 of the AFT Act can be read harmoniously. Sub-section (1) gives the jurisdiction and power to the AFT to hear the appeal against which order, an appeal would lie is mentioned in its sub-section (2).

16. The contention of the learned counsel for the petitioner that the Principal Bench has wrongly interpreted the word 'order' as 'final order'. It is not correct interpretation of law. There are various types of orders which come into existence during Court proceedings. They may be interlocutory orders, such as interim orders, routine type of orders as such adjournments, orders which do not finally decide the rights of the parties and the orders which ultimately decide the rights of the parties finally. It is in the wisdom of the legislature to provide against which kind of order an appeal would lay. This is an acknowledged legal position that in the Civil Procedure Code and the Criminal

Procedure Code, all the orders have not made appealable or reviseable. Only certain orders have been made either appealable or reviseable. The Principal Bench has given the restricted meaning to the word 'order' in view of the aims and objects of the establishment of Armed Forces Tribunal. It provides appeal arising out of verdict of the Court Marshal of the members of the three services Army, Navy and Air Force for quicker and less expensive justice to the members of the Armed Forces and of the Union. It is well settled principle of law that the Court cannot read anything into the statutory provision which is flowing unambiguous. A statute is an edict of the legislature. The language employed in a statute is determinative factor of legislative intend. The first and the primary rule of construction is that intention of the legislature must be found under the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said, as observed by the Apex Court in ***'Parkash Nath Khanna v. C.I.T. JT 2004(2) SC 150***. We are, therefore, unable to accept the interpretation of word 'order' as suggested by the learned counsel for the petitioner.

17. The upshot of the above discussion is that we find considerable force in the preliminary objection raised by the learned counsel for the respondents that the present appeal is not maintainable. It has got substance and is liable to be accepted. The preliminary objection is upheld. With the result, all the appeals are hereby dismissed being not maintainable. But before parting with the case, we are tempted to make

an observation that since the matter is old one and we were informed that Summary of Evidence has been recorded and Court of Inquiry was also conducted on number of times, it is desirable for the respondents to take a final decision in the matter. Prevalence of fluid and uncertain situation is not good either for the petitioner or for Army Administration for an indefinite period. We hope and trust that final curtain will be drawn shortly, say within 2-3 months.

17. With the aforesaid observation, the petitions are hereby dismissed being not maintainable.

(Justice Prakash Krishna)

(Lt Gen DS Sidhu (Retd))

22.01.2016
raghav

Whether the judgment for reference is to be put on internet? Yes / No.