

ARMED FORCES TRIBUNAL REGIONAL BENCH, KOCHI

R.A.NO..3 OF 2013 IN T.A.NO.203 OF 2010
TUESDAY, THE 5TH DAY OF MARCH, 2013/14TH PHALGUNA, 1934
CORAM:

HON'BLE MR. JUSTICE SHRIKANT TRIPATHI, MEMBER (J)
HON'BLE LT.GE.THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

APPLICANT:

EX SEPOY MANJUNATHA.V.S., AGED ABOUT 30 YEARS,
S/O.SRI. SIVANNA, EX MEG AND CENTRE,
NOW RESIDING AT:
VILLAGE VEERAPURA, P.O.THEETHAQ,
THALUK – KORATAAGEERE, DIST. THUMKUR,
KARNATAKA STATE, PIN – 572 129.

BY ADV.SRI.V.K.SATHYANATHAN.

VERSUS

RESPONDENTS:

1. THE UNION OF INDIA,
REPRESENTED BY THE SECRETARY,
MINISTRY OF DEFENCE,
SOUTH BLOCK, D.H.Q.P.O., NEW DELHI – 110 011.
2. THE CHIEF OF THE ARMY STAFF,
COAS'S SECRETARIAT,
SOUTH BLOCK, D.H.Q.P.O , NEW DELHI – 110 011.
3. THE COMMANDANT AND OFFICER-IN-CHARGE,
ABHILEKH KARYALAYA, MADRAS ENGINEERING GROUP,
PIN 900 493, C/O.56 A.P.O.
4. THE COMMANDING OFFICER, 6 ENGINEERING REGIMENT,
C/O.56 A.P.O.

BY ADV.SRI.K.M.JAMALUDHEEN, SENIOR PANEL COUNSEL

O R D E R

Shrikant Tripathi, Member (J):

1. Heard Mr.V.K.Sathyanathan for the applicant and Mr.K.M.Jamaludheen for the respondents and perused the record.

2. The instant Review Application has been filed by the applicant for review of the order dated 13th of December 2012 rendered in T.A.No.203 of 2010. The order under review is very elaborate order dealing with the entire factual and legal scenario of the case. The learned counsel for the applicant submitted that the applicant was tried for the charge under Section 39(b) of the Army Act, 1950, but according to the records, the trial ought to have been held for the charge under Section 38 of the Army Act.

3. This point was not pressed during the course of final hearing and as such the applicant cannot be permitted to raise a new ground by way of review application. More so, the charge under section 38 is graver in nature, for which

imprisonment for a term which may extend to 7 years can be inflicted, whereas for the offence under Section 39(b), the maximum punishment is of 3 years only. In this view of the matter, it could not be contended that the applicant was prejudiced due to the charge. It is also significant to mention that the applicant had overstayed the leave granted to him. So his trial by the Summary Court Martial under Section 39(b) was perfectly justified.

4. It was next submitted that in paragraph 5 of the order, a reference of Note 1(c) to Army Act section 38 has been made. But no such Note is seen in any book. The learned counsel for the applicant seems to have lost sight of the book published by the Government of India, in which the said Note exists.

5. In our view, there does not appear to be any error apparent on the face of record in the order under review. There does not appear to be any circumstance to show that any material part of evidence was overlooked or any irrelevant evidence was taken into consideration while

passing the order under review.

6. The counsel for the respondents submitted that the Tribunal has no power to review its order rendered in a proceeding under section 15 of the Armed Forces Tribunal Act, though such power lies with the Tribunal with regard to the proceedings under section 14 of the said Act. In this connection the learned counsel for the respondents referred to the provisions of section 14(4) with regard to the proceedings under Section 14 of the Act. He further referred to the provisions of section 17 of the aforesaid Act with regard to the proceedings instituted under section 15 of the Act. Under section 17, no provision with regard to review has been provided whereas under section 14(4)(f) provision for review has been incorporated.

7. We fully concur with the submissions made on behalf of the respondents. There is the provision in section 14(4)(f) for review of the order passed in a proceeding under section 14 of the Armed Forces Tribunal Act, but no such provision exists with regard to the proceeding

under section 15.

8. In view of the aforesaid the Review Application has no merit and is dismissed.

9. There will be no order as to costs.

10. Issue copy of the order to both side.

Sd/-

LT.GEN.THOMAS MATHEW
MEMBER (A)

Sd/-

JUSTICE SHRIKANT TRIPATHI
MEMBER (J)

an

(true copy)

Prl.Pvt.Secretary