

(2014) 03 JH CK 0061
In the Jharkhand High Court
Case No : L.P.A. Nos. 253 and 348 of 2013

Arjun Kumar Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 24-03-2014

Acts Referred:

Armed Forces Tribunals Act, 2007 — Section 14, 34, 34(1)
Constitution Of India, 1950 — Article 226, 227
Evidence Act, 1872 — Section 123, 124
Army Rules, 1954 — Rule 13(3)

Citation : (2014) 2 JLJR 645

Hon'ble Judges : Dhirubhai Naranbhai Patel, J; Amitav Kumar Gupta, J

Bench : Division Bench

Advocate : Manoj Tandon, Shiv Shankar Kumar, Kumari Rashmi and Navin Kumar Singh, Advocate for the Appellant; Prabhask Kumar, C.G.C, Advocate for the Respondent

Final Decision : Allowed

Judgement

Dhirubhai Naranbhai Patel, J.

L.P.A. No. 253 of 2013

1. This Letters Patent Appeal has been preferred by the appellant (original petitioner) against the judgment and order delivered by the learned Single Judge on 01.07.2013 in Civil Review No. 26 of 2010, preferred in W.P. (S) No. 1769 of 2004, decided on 25.02.2010.

L.P.A. No. 348 of 2013

2. This Letters Patent Appeal has been preferred by the appellant (original petitioner) against the judgment and order passed by the learned Single Judge in W.P. (S) No. 1769 of 2004 dated 25.02.2010.

3. Thus, both these Letters Patent Appeals have been preferred against the order passed in writ petition and order passed in civil review.

4. Learned counsel appearing for the appellant has submitted that the petitioner was working as Signal Man/Sipoyee in the Indian Army and Major General, Ground Officer Commanding (GOC), 23rd Infantry Division, passed an order of discharge of this petitioner and therefore, the petition was preferred initially, before the Hon"ble Patna High Court and thereafter before this High Court under Article 226 of the Constitution of India, thereafter, Armed Forces Tribunal came into force vide Notification dated 18.11.2009. The Armed Forces Tribunal at Kolkata came into force and the said Tribunal is working since 23.11.2009 and therefore, by virtue of Section 34 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as the Act, 2007 for the sake of brevity), the writ petition bearing W.P. (S) No. 1769 of 2004 stood transferred to the said Armed Forces Tribunal, automatically, by virtue of Sub-section (1) of Section 34 of the Act, 2007 and hence, the judgment and order passed by the learned Single Judge deserves to be quashed and set aside because there was want of jurisdiction on the part of this Court and this appellant (original petitioner) is ready and willing to go before the Armed Forces Tribunal at Kolkata and shall cooperate in hearing before the said Tribunal and shall not ask for unnecessary adjournments and shall also cooperate in earlier disposal of this petition on merit.

5. Learned counsel appearing for the appellant submitted that punishment imposed upon this appellant (original petitioner) is shockingly disproportionate to the nature of misconduct. These two aspects have not been properly appreciated by the learned Single Judge while deciding the W.P. (S) No. 1769 of 2004 as well as while deciding Civil Review No. 26 of 2010 and hence, both the Letters Patent Appeals may be allowed and W.P. (S) No. 1769 of 2004 may be transferred to the Armed Forces Tribunal at Kolkata with a direction to dispose of the same at the earliest.

6. Learned counsel appearing for the Union of India -- Central Government Counsel submitted that they have no much objection for transferring of the case from this Court to the Armed Forces Tribunal at Kolkata because the said transfer is by virtue of law i.e. Sub-section (1) of Section 34 of the Act, 2007. So far as merit of the case is concerned, it is submitted by the learned counsel for the Union of India that if the case is to be transferred to the Armed Forces Tribunal at Kolkata, then there is no need to make submission on merit and nothing much be observed on the merit of the case by this Court, otherwise nothing will remain to be decided by the said Tribunal. Nonetheless, it is submitted by the learned counsel for the Union of India that the quantum of punishment inflicted upon the delinquent petitioner is absolutely inconsonance with the nature of misconduct and it cannot be levelled as shockingly disproportionate punishment.

7. Having heard learned counsel for both the parties and looking to the facts and circumstances of the case, we hereby, quash and set aside the order and judgment passed in W.P. (S) No. 1769 of 2004 dated 25.02.2010 as well as order and judgment passed in Civil Review No. 26 of 2010 dated 01.07.2013 mainly for the following facts and reasons, that:-

(i) This appellant (original petitioner) has instituted W.P. (S) No. 1769 of 2004 under Article 226 of the Constitution of India before this Court mainly agitating on the ground of order of discharge passed by the Major General, Ground Officer Commanding (GOC), 23rd Infantry Division on the ground that he was not competent authority as per Rule 13(3) Table III(v) of the Army Rules, 1954 and also on other several grounds inter alia on the ground of shockingly disproportionate punishment. The petitioner was working as Signal Man/Sipoyee in the India Army.

(ii) It appears that after filing of the writ petition before this Court the Armed Forces Tribunal Act, 2007 was enacted by the Parliament, Sections 14 and 34 of the said Act read as under:-

14. Jurisdiction, powers and authority in service matters.--(1) Save as otherwise expressly provided in this Act, the tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority, exercisable immediately before that day by all courts (except the Supreme Court or a High Court exercising jurisdiction under article 226 and 227 of the Constitution) in relation to all service matters.

(2) Subject to the other provisions of this Act, a person aggrieved by an order pertaining to any service matter may make an application to the Tribunal in such form and accompanied by such documents or other evidence and on payment of such fee as may be prescribed.

(3) On receipt of an application relating to service matters, the Tribunal shall, if satisfied after due inquiry, as it may deem necessary, that it is fit for adjudication by it, admit such application; but where the Tribunal is not so satisfied, it may dismiss the application after recording its reasons in writing.

(4) For the purpose of adjudicating an application, the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:--

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) Subject to the provisions of Section 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing an application for default or deciding it ex parte;

(h) setting aside any order of dismissal of any application for default or any order passed by it ex parte; and

(i) any other matter which may be prescribed by the Central Government.

(5) The Tribunal shall decide both questions of law and facts that may be raised before it.

34. Transfer of pending cases.--(1) Every suit, or other proceeding pending before any court including a High Court or other authority immediately before the date of establishment of the Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based, is such that it would have been within the jurisdiction of the Tribunal, if it had arisen after such establishment within the jurisdiction of such Tribunal, stand transferred on that date to such tribunal.

(2) -----

[Emphasis added]

(iii) In view of the aforesaid provisions of the Act, 2007, the Armed Forces Tribunal has power, jurisdiction and authority to decide the dispute between the parties in W.P. (S) No. 1769 of 2004.

(iv) Looking to the facts that Central Government has already issued Notification dated 18.11.2009 to bring into force the Armed Forces Tribunal at Kolkata, as per Sub-section (1) of Section 34 of the Act, 2007, the W.P. (S) No. 1769 of 2004 stand transferred to the Armed Forces Tribunal at Kolkata. This transfer is automatic by virtue of law. There is no need of any specific order to be passed by this Court, the only procedure left out is to send the papers to the concerned Tribunal by the Registrar General of this Court. Thus, once Sub-section (1) of Section 34 of the Act, 2007 is made operative, this Court seized the jurisdiction to decide the issues covered by the Section 14 of the Act, 2007.

(v) It is submitted jointly by the learned counsel for the parties that Armed Forces Tribunal at Kolkata is working and functioning since 23.11.2009 thus, the writ petition could not have been decided by the learned Single Judge as there is want of jurisdiction, this affects very root of the case.

(vi) As the matter has already been transferred by virtue of law and hence, we are quashing and setting aside the order and judgment passed in W.P. (S) No. 1769 of 2004 as well as order and judgment passed in Civil Review No. 26 of 2010. We are not expressing our opinion on the merit of the case, whether the punishment is shockingly disproportionate or not and whether any procedure has been followed or not. All these issues are kept open to be decided by the Armed Forces Tribunal at Kolkata.

(vii) In fact once the Armed Forces Tribunal at Kolkata is working by virtue of Notification dated 18.11.2009, issued by the Central Government, no writ petition is pending before the Court looking to the provision of Sub-section (1) of Section 34 of the Act, 2007 and hence, the order and judgment passed by the

learned Single Judge in W.P. (S) No. 1769 of 2004 as well as order and judgment passed in Civil Review No. 26 of 2010 are non-est order and nothing will be looked into from this order while deciding the issues on merit by the Armed Forces Tribunal at Kolkata. The views expressed by the learned Single Judge while deciding the W.P. (S) No. 1769 of 2004 as well as Civil Review No. 26 of 2010 was not proper.

8. As a cumulative effect of the aforesaid facts, reasons and the law stated hereinabove, we hereby quash and set aside the order and judgment passed by the learned Single Judge in W.P. (S) No. 1769 of 2004 dated 25.02.2010 as well as order and judgment passed in Civil Review No. 26 of 2010 dated 01.07.2013 and we, hereby, direct the Registrar General of this Court to immediately transfer the papers of the W.P. (S) No. 1769 of 2004 to the Armed Forces Tribunal at Kolkata as the said writ petition has already been transferred by virtue of law. The papers be transmitted to the said Tribunal at the earliest, and in no case later than three weeks from today.

9. The parties of this appeal have submitted jointly that they shall immediately approach the Armed Forces Tribunal at Kolkata, if any need arises with necessary application for early hearing and they shall cooperate in hearing of the case and shall not take unnecessary adjournments and we expect from the Armed Forces Tribunal at Kolkata to decide the dispute between the parties, at the earliest, in accordance with law, and on the basis of evidence on record and without being influenced by the judgment and order delivered by the learned Single Judge in W.P. (S) No. 1769 of 2004 dated 25.02.2010 as well as order and judgment passed in Civil Review No. 26 of 2010 dated 01.07.2013.

10. Accordingly both these Letters Patent Appeals are allowed and disposed of.