

(2020) 10 AFT CK 0014
In the Armed Forces Tribunal
Case No : Original Application No. 1431 Of 2020

A.S. Sandhu

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 19-10-2020

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14, 21

Citation : (2020) 10 AFT CK 0014

Hon'ble Judges : Rajendra Menon, J; Philip Campose, Member (A)

Bench : Division Bench

Advocate : Ankur Chhibber, Karan Singh Bhati

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the parties on the question of admission.
2. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as the AFT Act'), the applicant has filed this application and the reliefs claimed read as under :

â??(a) To direct the Respondents to consider and dispose off the Statutory Complaint of the Applicant dated 18.09.2020 in light of the averments mentioned therein within a period of two weeks keeping in view the urgency involved;

(b) In the eventuality of allowing of the Statutory Complaint, the Applicant be promoted to the rank of Lt Gen alongwith his restored seniority;

(c) Pass any other order/orders as deemed appropriate by this Hon'ble Tribunal in the facts and circumstances of the present case.

That apart, in Para 9 of the application, the following interim relief is also

claimed :

That till the time instant OA is pending adjudication before this Hon'ble Tribunal, the Respondents be restrained from declassifying the

Board results till the time order is passed on the Statutory Complaint of the Applicant.

3. Main grievance of the applicant is that the respondents are not passing any order in respect of the Statutory Complaint submitted by him on

18.09.2020, wherein he seeks for setting aside redressal granted to certain officers of the Navy, Air For. And Army, who are in the Armed Forces

Medical Services (AFMS) and it is his contention that the Non-Statutory Complaints of these officers were decided just before the Special Promotion

Board (AFMS) met on 14.09.2020 in an unjust, unfair and violative manner, as a result of which, the applicant's right for promotion has been adversely

affected and he anticipates that he is not being promoted.

3. The applicant is presently posted as Senior Consultant (Surgery) in the office of the respondents. It is said that for filling up various vacancies on

the post of It Gen', the Special Promotion Board (AFMS), AMC was constituted and, as indicated hereinabove, before the meeting of the Special

Promotion Board, Non-Statutory Complaints of certain officers were decided only to grant them undue benefits, which resulted in ousting the applicant

from empanelment. It is the case of the applicant that, had the Non-Statutory complaints of these officers, particulars of which are given in Para 4.25

of the application, not decided before the meeting of the Promotion Board, the applicant would have been promoted. On the presumption that now

because of these factors, the applicant would not stand a chance for empanelment in the circumstances created, this application has been filed with

the prayers, as indicated hereinabove, primarily on the ground that in expunging/ setting-aside certain CR ratings and gradings of these persons by using

a wrong and illegal procedures, th, three officers, whose particulars are mentioned in Para 4.25 of the application, have risen higher up than the

applicant in the over-all merit, thereby depleting the chance of the applicant for promotion. It is stated that now if the Statutory Complaint of the

applicant is not decided before declassification of the Board proceedings, the applicant would suffer irreparable loss and it would adversely affect his

right for promotion.

4. On instructions, Shri Karan Singh Bhati, learned Senior Standing Counsel for the respondents, raises various objections with regard to the maintainability of this application. He submits that admittedly the Statutory Complaint was submitted by the applicant only on 18.09.2020 and without waiting for the six months' period, as provided under Section 21 of the AFT Act, this application has been filed without exhausting the statutory remedy and is, therefore, not maintainable. That apart, he submits that until and unless the proceedings of the Special Promotion Board issued declassification orders and promotion issued, no cause of action would accrue to the applicant to file this application. He further submits that the main grievance of the applicant in this application is, as stated in Paras 4.25 and 5.6 of the application, pertaining to expunging the CR ratings and gradings of three officers and without impleading those officers and making a prayer for setting aside the orders passed in this case, this application is not maintainable. That apart, Shri Bhati argued that within one month of filing the Statutory Complaint on 18.09.2020, this application filed should not be entertained and the respondents should be given a reasonable chance to decide the Statutory Complaint in accordance with law, which would take some time.

5. In sum and substance, it is the case of the respondents that, at this stage, based on the averments made in the manner as detailed in the application, this application in anticipation of certain events is not maintainable.

6. We have considered the rival contentions of the learned counsel for the parties and have taken note of certain aspects of the matter. However, considering the fact that the main grievance of the applicant is that his Statutory Complaint is still pending and has not been decided, we deem it appropriate to issue a direction to the respondents for deciding the Statutory Complaint of the applicant within a reasonable period and, at this stage, based on material available on record, we do not deem it appropriate to go into various objections canvassed by Shri Bhati at the time of hearing. That apart, we are of the considered view that the interim relief prayed for by the applicant cannot be granted as there cannot be any interim order restraining the respondents from de-classifying the Board results as ultimately, if de-classification is ordered, the applicant can challenge the same and seek appropriate remedy in accordance with law and, therefore, granting an

interim relief in this regard, at this stage, in our considered view, is not proper.

7. Accordingly, we allow this application to the extent that the prayer made for deciding the Statutory Complaint is allowed. However, we grant the respondents Forty Five (45) days' time, from the date of receipt of the copy of this order, to decide the Statutory Complaint and communicate the order so passed to the applicant. That apart, for the present, we see no reason to make any further indulgence in the matter and/or issue any further direction.

8. With the aforesaid, present application stands disposed of. No order as to costs.