
(2010) 04 UK CK 0009
In the Uttarakhand High Court

Capt. V.N. Saxena

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 16-04-2010

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14(2), 15, 34

Indian Penal Code, 1860 — Section 175, 178, 179, 180, 193, 195, 196, 228

Citation : (2010) 04 UK CK 0009

Hon'ble Judges : J.S. Khehar, C.J.;V.K. Bist, J

Bench : Division Bench

Judgement

J.S. Khehar, C.J.—Aggrieved by an order, passed on the culmination of a Summary Court Martial dated 13.11.1990, the petitioner filed Civil Misc. Writ Petition No. 5782 of 1991 in the High Court at Allahabad. The aforesaid writ petition was transferred to the Uttarakhand High Court u/s 35 of the U.P. Reorganisation Act, 2000. In this Court, the writ petition filed by the petitioner was re-numbered as Writ Petition (S/B) No. 1436 of 2001. The writ petition was decided by a Division Bench of this Court on 14.07.2005, against which the respondents filed a petition for Special Leave to Appeal before the Apex Court. The matter was remanded back by the Apex Court for fresh consideration, vide order dated 01.04.2008. On receipt after remand, it was re-numbered as Writ Petition (S/B) No. 78 of 2008. After the promulgation of the Armed Forces Tribunal Act, 2007, a petition assailing the proceedings of a Summary Court Martial, and the order passed thereupon, would only lie to the Armed Forces Tribunal u/s 15 of the Armed Forces Tribunal Act, 2007. Section 15 is being extracted hereunder:

15. Jurisdiction, powers and authority in matters of appeal against court-martial.--(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 under this Act in relation to appeal against any order, decision, finding or sentence passed by a court-martial or any matter connected therewith or incidental thereto.

(2) Any person aggrieved by an order, decision, finding or sentence passed by a court-martial may prefer an appeal in such form, manner and within such time as may be prescribed.

(3) The Tribunal shall have power to grant bail to any person accused of an offence and in military custody, with or without any conditions which it considers necessary:

Provided that no accused person shall be so released if there appears reasonable ground for believing that he has been guilty of an offence punishable with death or imprisonment for life.

(4) The Tribunal shall allow an appeal against conviction by a court-martial where--

(a) the finding of the court martial is legally not sustainable due to any reason whatsoever; or

(b) the finding involves wrong decision on a question of law; or

(c) there was a material irregularity in the course of the trial resulting in miscarriage of justice,

but, in any other case, may dismiss the appeal where the Tribunal considers that no miscarriage of justice is likely to be caused or has actually resulted to the appellant:

Provided that no order dismissing the appeal by the Tribunal shall be passed unless such order is made after recording reasons therefore in writing.

(5) The Tribunal may allow an appeal against conviction, and pass appropriate order thereon.

(6) Notwithstanding anything contained in the foregoing provisions of this section, the Tribunal shall have the power to--

(a) substitute for the findings of the court martial, a finding of guilty for any other offence for which the offender could have been lawfully found guilty by the court martial and pass a sentence afresh for the offence specified or involved in such findings under the provisions of the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950), as the case may be; or

(b) if sentence is found to be excessive, illegal or unjust, the Tribunal may--

(i) remit the whole or any part of the sentence, with or without conditions;

(ii) mitigate the punishment awarded;

(iii) commute such punishment to any lesser punishment or punishments mentioned in the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), as the case may be;

(c) enhance the sentence awarded by a court martial:

Provided that no such sentence shall be enhanced unless the appellant has been given an opportunity of being heard;

(d) release the appellant, if sentenced to imprisonment, on parole with or without conditions;

(e) suspend a sentence of imprisonment;

(f) pass any other order as it may think appropriate.

(7) Notwithstanding any other provisions in this Act, for the purposes of this section, the Tribunal shall be deemed to be a criminal court for the purpose of Sections 175, 178, 179, 180, 193, 195, 196 or 228 of the Indian Penal Code (45 of 1860) and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

2. But then in terms of Section 34 of the Armed Forces Tribunal Act, 2007 all such proceedings, inter alia, pending before a High Court, which would have fallen within the jurisdiction of a Tribunal, had such proceeding arisen after the establishment of the Armed Forces Tribunal, are mandatory to stand transferred to the Armed Forces Tribunal on the date on which the Tribunal was constituted. Section 34 of the Armed Forces Tribunal Act, 2007 is being reproduced hereunder:

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) Where any suit, or other proceeding stands transferred from any court including a High Court or other authority to the Tribunal under Sub-section (1),--

(a) the court or other authority shall, as soon as may be, after such transfer, forward the records of such suit, or other proceeding to the Tribunal;

(b) the Tribunal may, on receipt of such records, proceed to deal with such suit, or other proceeding, so far as may be, in the same manner as in the case of an application made under sub-section (2) of Section 14, from the stage which was reached before such transfer or from any earlier stage or de novo as the Tribunal may deem fit.

3. We are satisfied that the impugned order sought to be assailed by the petitioner through the instant writ petition would have fallen within the jurisdiction of the Tribunal u/s 15 of the Armed Forces Tribunal Act, 2007, had the same been passed after the establishment of the Tribunal. Thus viewed in terms of Section 34 of the Armed Forces Tribunal Act, 2007, the instant writ petition would stand automatically transferred to the Armed Forces Tribunal on

the constitution thereof.

4. In view of the above, the Registry of this Court is directed to transfer the instant writ petition to the Armed Forces Tribunal u/s 34 of the Armed Forces Tribunal Act, 2007.