

(2021) 01 AFT CK 0008

In the Armed Forces Tribunal

Case No : Original Application No. 1729 Of 2020, Miscellaneous Application No. 1976 Of 2020

Jagamohan Badadalei

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 08-01-2021

Acts Referred:

Air Force Act, 1950 — Section 161, 161(2)
Armed Forces Tribunal Act, 2007 — Section 15

Citation : (2021) 01 AFT CK 0008

Hon'ble Judges : Rajendra Menon, J;P.M. Hariz, Member (A)

Bench : Division Bench

Advocate : R.N. Singh, Rajiv Kumar, Karan Singh Bhati

Final Decision : Disposed Of

Judgement

1. Applicant has filed this application and the prayers made in this application read as under:

(a) To admit and allow the present Original Application.

(b) To suspend the sentence which has been imposed vide order dated 22.7.2019 passed by the General Court Martial (Assembled at 36

Wing Air Force) and which has been confirmed by the order dated 27.9.2019 passed by the confirming authority (respondent No.2 herein)

till the respondent No.1 decides the appeal under Section 161 of the Air Force Act dated 15.10.2019.

(c) To also grant additional 30 days' bail for filing the application before this Hon'ble Tribunal in case the Appellate Authority reject the

appeal of the applicant dated 15.10.2019.

(d) direct the respondent No.1 to decide the appeal of the applicant dated

15.10.2019 at an early date which may be deemed fit by this

Hon'ble Tribunal.

(e) to dispense with the affidavit as well as Verification of the applicant as the applicant is undergoing the sentence at Central Prison,

Vadodara.

2. However, during the course of hearing on 12.11.2020, it was noticed on the basis of objections raised by Shri Bhati, learned senior counsel for the

respondents, that the applicant has not challenged the orders dated 22.07.2019 and 27.09.2019 and, therefore, at this stage, this appeal under Section

15 of the Armed Forces Tribunal Act, 2007 is not maintainable. However, Shri R.N. Singh, learned counsel appearing for the applicant, rebuts the

aforesaid objection and points out that under the Statute, the applicant has a further alternate remedy under Section 161(2) of the Air Force Act, 1950

and having invoked the said jurisdiction had requested Respondent No. 1, Chief of Air Staff, to take a decision on his appeal and also consider his

application for suspension of sentence. Shri Singh argues that, at this stage, applicant is not required to challenge the orders passed on 22.07.2019 and

27.09.2019. The applicant would be satisfied if a direction is issued to the Chief of the Air Staff (Respondent No. 1) to take a decision on the

application filed by the applicant under Section 161 (2) of the Air Force Act and the application for suspension of sentence and depending upon the

consequences of the decision taken by the said Competent Authority, the applicant will take action as may be permissible in law.

3. Considering the submissions made by Shri R.N. Singh, we are of the considered view that the interest of justice would be met in case a direction is

issued, for the present, to Respondent No. 1 to take a decision on the application submitted by the applicant under Section 161(2) of the Air Force Act

along with the application for suspension of sentence and thereafter, liberty granted to the applicant to take recourse to such remedy as may be

available under law, in case he has any grievance still subsisting.

4. Accordingly, for the present, without expressing any opinion on the merit and the averments made in the application, we dispose of the application

with the following directions :

On the applicant's submitting a certified copy of the order along with relevant documents, Respondent No. 1 shall decide the application of

the applicant filed under Section 161(2) of the Air Force Act, 1950 so also the application for suspension of sentence, within a period of

two months from the date of its submission and communicate the decision to be taken by way of speaking order to the applicant. Needless to

emphasise that if still any grievance subsists, the applicant shall have the remedy to take recourse of such procedures as may be available

under law.

5. With the aforesaid, the matter stands disposed of.