
(2010) 12 UK CK 0144
In the Uttarakhand High Court
Case No : Writ Petition No. 756 (PIL) of 2008

Lalit Kumar

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 14-12-2010

Acts Referred:

Air Force Act, 1950 — Section 18
Armed Forces Tribunals Act, 2007 — Section 3, 3(o), 14, 15, 16, 16(1), 29, 35
Army Act, 1950 — Section 18
Constitution Of India, 1950 — Article 20(2), 136(2), 226, 227(4)
Navy Act, 1957 — Section 15(1)

Citation : (2010) 12 UK CK 0144

Hon'ble Judges : Barin Ghosh, C.J;Nirmal Yadav, J

Bench : Division Bench

Judgement

Barin Ghosh, C.J.—In this writ petition, in the nature of public interest litigation, constitutional validity of the Armed Forces Tribunal Act, 2007 has been challenged. It is being contended that the Act is invalid in as much as the same applies to people serving in Army, Navy and Air Force and not to other Armed Forces of the Union of India. We are of the view that on that ground it cannot be held that the Act is invalid.

2. Writ Petitioner challenges the definition of service matters given in Clause (o) of Section 3 of the Act. By and under the Act, Tribunal constituted thereunder has been vested with power to adjudicate service matters and has also appellate jurisdiction in relation to court martials. Clause (o) of Section 3 of the Act defines "service matters" as follows:

(o) "service matters", in relation to the persons subject to the Army Act, 1950 (46 of 1950) the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950) mean all matters relating to the conditions of their service and shall include-

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions;

(iii) summary disposal and trials where the punishment of dismissal is awarded;

(iv) any other matter, whatsoever,

but shall not include matters relating to-

(i) order issued u/s 18 of the Army Act, 1950 (46 of 1950), Sub-section (1) of Section 15 of the Navy Act, 1957 (62 of 1957) and Section 18 of the Air Force Act, 1950; (45 of 1950) and

(ii) transfers and postings including the change of place or unit on posting whether individually or as a part of unit, formation or ship in relation to the persons subject to the Army Act, 1950 (46 of 1950) the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950);

(iii) leave of any kind;

(iv) summary court martial except where the punishment is of dismissal or imprisonment for more than three months;

3. In the event the word "except" as underlined by us remains, summary court martial where the punishment is of dismissal or imprisonment for more than three months, will become service matters to be dealt with by the Tribunal in exercise of jurisdiction vested in it to deal with service matters. But if the said word "except" is removed then summary court martial where the punishment is of dismissal or imprisonment for more than three months will be excluded from service matters and accordingly shall be dealt with in exercise of appellate power granted by Section 15 of the Act. The Union of India is of the view that summary court martial where the punishment is of dismissal or imprisonment for more than three months, should be outside of the purview of service matters. It is also of the view that imprisonment for less than three months is outside the purview of the Tribunal. The way words have been couched, while giving definition of service matters, it does not appear that legislature understood the requirement of Union of India that imprisonment for less than three months should be outside the purview of the Tribunal. The manner in which the words have been couched in the Statute, if underlined word "except" is retained then where the punishment is of dismissal or imprisonment for more than three months, the same will form part of service matters and shall be dealt with in accordance with jurisdiction vested in the Tribunal by Section 14 of the Act; where as summary court martial where the punishment is less than three months shall be dealt with by the Tribunal in exercise of its appellate power u/s 15 of the Act, and in case, the word "except" is removed summary court martial where the punishment is of dismissal or imprisonment for more than three months shall be dealt with by the Tribunal in exercise of its appellate jurisdiction vested by Section 15 of the Act. We, therefore, feel that in order to make the Act in consonance with the

understanding of Union of India as well as the legislature the underlined word "except" is superfluous and the same should be removed. We, accordingly, do the same. Even after removal of the underlined word "except" summary court martial where the punishment is of less than three months, the same would come within the meaning of service matters by reason of plain English used in the Statute. It shall be open to the appropriate authority to take appropriate steps in that regard.

4. It has been contended in the writ petition that in terms of Section 29 of the Act, adjudication by the Tribunal reaches finality and cannot be called in question in any court. It has been contended that power of judicial review vested in the High Courts and in the Hon"ble Supreme Court has thus been interfered with. In this context, we only say that power of judicial review granted to High Courts and Hon"ble Supreme Court by the Constitution cannot be interfered with by a simple enactment and accordingly, despite Section 29 of the Act, the power of judicial review vested in the High Courts and Hon"ble Supreme Court will remain intact.

5. Although a plea relating to pleading of guilty and not guilty has been taken in the body of petition but the Petitioner, who appeared in person, did not urged the same expressly. It was, however, urged that in view of Articles 227(4) and 136(2) of the Constitution of India vesting of appellate jurisdiction u/s 15 of the Act in the Tribunal is meaningless. None of the said provisions of the Constitution derogates power to provide appellate forum against those mentioned in Section 15 of the Act.

6. It was urged that since Benches are limited the same would be violative of the very scheme of the Act. The Principal Bench has been directed to be established by the Act in Delhi. The remaining Benches are to be established as and when required. In the event, there is requirement for establishment of more Benches, the same would be established. In the event the same are not established that would be a separate cause of action but on that ground the validity of the Act cannot be challenged. Section 14 of the Act does not deal with the proceedings filed before High Court under Articles 226 and 227 of the Constitution of India and accordingly, there is no conflict between Section 14 and 35 of the Act.

7. It was urged that Section 16 of the Act is violative of Article 20(2) of the Constitution of India. Sub-Section 1 of Section 16 of the Act prohibits re-trial. Sub-Section 2 grants power to the Tribunal to direct re-trial when the appeal against conviction is allowed by reasons only of evidence received or available to be received by the Tribunal under the Act and it appears that interest of justice requires that an order under that Sub-section should be made. We feel that enough safety measures have been provided which are akin to the power of directing re-trial under the Code of Criminal Procedure too.

8. We, accordingly, conclude the matter and dispose of the writ petition.