
(2011) 01 AHC CK 0047

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 43411 of 1999

Major Anil Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-01-2011

Acts Referred:

Armed Forces Tribunals Act, 2007 — Section 3(o), 3(o)(iv), 14, 34
Constitution Of India, 1950 — Article 226, 227

Citation : (2011) 3 AWC 2793 : (2011) 128 FLR 878

Hon'ble Judges : S.P. Mehrotra, J; Pankaj Mithal, J

Bench : Division Bench

Judgement

S.P. Mehrotra and Pankaj Mithal, JJ.—Case called out in the revised list.

Learned Counsel for the Petitioner is present.

The Petitioner was holding the rank of Captain in the Indian Army at the relevant time.

2. As per the averments made in the writ petition, punishments were awarded to the Petitioner as a result of General Court Martial. The punishments awarded to the Petitioner were forfeiture of two years' service for the purpose of promotion and severely reprimanding the Petitioner.

Statutory complaint of the Petitioner against the punishments awarded was rejected by the Chief of the Army Staff by the order dated 16.3.1999.

3. The present writ petition was, thereafter, filed by the Petitioner, inter alia, praying for quashing of the said order dated 16.3.1999.

Thus; the subject-matter of the writ petition pertains to service matter in respect of the Petitioner, who was a member of the Armed Forces covered by the Army Act, 1950.

In *Dev Saran Mishra v. Union of India and Ors.* 2010 (3) ADJ 593 (paragraphs

23, 24, 25, 26 and 27) a learned Single Judge of this Court has considered in detail the provisions of the Armed Forces Tribunal Act, 2007 (in short "the Act") in the light of various judicial decisions, and has held that in case the cause of action involved in a writ petition is such as falls within the jurisdiction of the Tribunal after enforcement of the Armed Forces Tribunal Act, 2007, such cause of action has to be adjudicated upon in the first instance by the Tribunal. It is only after the decision of the Tribunal, that the matter would come to the High Court under Article 226/227 of the Constitution of India.

4. In view of this, it has been laid down that the writ petitions pending before this Court, wherein, the cause of action is such as would fall within the jurisdiction of the Tribunal after enforcement of the Armed Forces Tribunal Act, 2007, would stand transferred to the Tribunal for adjudication in view of Section 34 of the said Act.

The above decision of the learned Single Judge has been followed by the Division Benches of this Court in the following decisions:

(A) Order dated 22.3.2010 passed in Civil Misc. writ petition No. 15363 of 2007 [(Late) Brig. (Retd.) Gaj Raj Singh Siwach and Ors. v. Union of India and Ors.], 2010 (80) ALR 692.

(B) Order dated 28.10.2010 passed in Special Appeal Defective No. 218 of 2006 [Anil Kumar Singh v. Union of India and Anr.].

(C) Order dated 6.12.2010 passed in Civil Misc. Writ Petition No. 21559 of 2002 [Smt. Indrawati Singh v. Union of India and Ors. Since reported in 2010 (128) FLR 289 (Alld.).

5. The cause of action of the present writ petition, as noted above, is evidently such as falls within the jurisdiction of the Tribunal after enforcement of the Act. This is evident from the provisions contained in Section 14 read with Section 3(o) of the said Act. It may be mentioned that cause of action of the present writ petition would not fall within the exception given in Sub-clause (iv) of Clause (o) of Section 3 of the said Act, as in the present case General Court Martial of the Petitioner was held, while the said clause pertains to the Summary Court Martial.

6. In view of the above, it is apparent that the present writ petition is to be transferred to the Tribunal u/s 34 of the Act.

We direct accordingly.

The Registry is directed to take appropriate steps in this regard.