

(2014) 02 AHC CK 0261

In the Allahabad High Court

Case No : Civil Misc. Writ Petition (S/B) No. 8051 of 1989

Major Kunwar Ambreshwar Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 20-02-2014

Acts Referred:

Air Force Act, 1950 — Section 18
Armed Forces Tribunals Act, 2007 — Section 3, 3(iv), 3(n), 3(o), 3(o)(i)(ii)(iii), 3(o)(iii), 3(o)(iv), 14, 14(2), 33, 34
Army Act, 1950 — Section 18, 84
Constitution Of India, 1950 — Article 226, 227
Evidence Act, 1872 — Section 123, 124
Navy Act, 1957 — Section 15(1)

Citation : (2014) 3 ADJ 309 : (2014) 5 ALJ 156 : (2014) LabIC 4108

Hon'ble Judges : Devi Prasad Singh, J; Ashok Pal Singh, J

Bench : Division Bench

Advocate : Akhilesh Kalra, Advocate for the Appellant; K.C. Kaushik, Advocate for the Respondent

Judgement

1. The petitioner, a Major of Indian Army, has preferred the instant writ petition under Article 226 of the Constitution of India feeling aggrieved with the impugned order passed by the General Officer Commanding, 15 Infantry Division awarding punishment of "severe reprimand". After enactment of the Armed Forces Tribunal Act, 2007 (In short, Act), the petition was remitted to Armed Forces Tribunal, Lucknow on 23.4.2010. Sections 33 and 34 of the Act provide that after notification, the jurisdiction of the Civil Court and all other Courts shall be barred and the pending matter in the High Court shall be remitted immediately before the tribunal after its establishment. The notification came into force on 15.6.2008. For convenience, Sections 33 and 34 of the Act are reproduced as under:

33. Exclusion of jurisdiction of Civil Courts.--On and from the date from which any jurisdiction, powers and authority becomes exercisable by the Tribunal in relation to service matters under this Act, no Civil Court shall have, or be entitled

to exercise, such jurisdiction, power or authority in relation to those service matters.

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.

2. It appears that Principal Bench of Armed Forces Tribunal, New Delhi had passed an order on 19.2.2010 and held that the question of punishment with regard to severe reprimand may not be adjudicated by the Armed Forces Tribunal in view of the definition contained in Section 3 of the Act. For convenience, relevant portion from the order passed by the Principal Bench of Armed Forces Tribunal, New Delhi is reproduced as under:

It may be mentioned that the definition in Section 3(o)(i)(ii)(iii) of the Act is in the nature of substantive law and confers jurisdiction to the Tribunal. However, Section 3(o)(iii) restricts the jurisdiction in the matter of Summary disposal only where the punishment of dismissal is awarded. This provision is clear and unequivocal. No other meaning can be attributed to it nor any aid is required from other provisions of this Act to interpret it. It shall also be beneficial to refer the views expressed by Hon'ble Supreme Court in the case of Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd., , holding that "the jurisdiction or the power of Arbitral Tribunal is prescribed under the Act and if the award is dehors the said provisions, it would be on the face of it, illegal. The decision of the Tribunal must be within the bounds and its jurisdiction conferred under the Act or the contract. In the present case the jurisdiction has been conferred to this Tribunal where in the summary disposal the punishment of the dismissal was awarded. Merely because the consequential relief's may flow with regard to other service matter this Court cannot user jurisdiction. At this stage, learned counsel for the petitioner mentioned that he may like to bring amendments in this petition for availing retiral benefits during the pendency of the petition. That

is a separate cause of action and that cannot be mixed up in the present case. Whatever be the position as on today, this Court has no jurisdiction. The case is remitted back to Delhi High Court.

Parties are directed to appear before Registrar General, Delhi High Court on 12.3.2010 for further date.

3. It may be mentioned that the case was remitted back to Delhi High Court.

4. Relying upon the aforesaid judgment of Principal Bench of Armed Forces Tribunal, New Delhi, Lucknow Bench of Armed Forces Tribunal has remitted back the writ petition to this Court again by order dated 13.5.2011.

5. A perusal of the order dated 13.5.2011 passed by the Armed Forces Tribunal, Lucknow Bench reveals that the tribunal has relied upon the aforesaid order of the Principal Bench of Armed Forces Tribunal, New Delhi.

6. A Division Bench of this Court has considered the argument advanced by the parties and while passing order dated 27.5.2013 expressed its opinion that prima facie, the order passed by the Principal Bench of Armed Forces Tribunal, New Delhi is not correct. Under Clause (iv) of Section 3, the Legislature has used the word "any other matter, whatsoever," which is exhaustive in nature and shall cover the cases of "severe reprimand".

7. Today, in spite of revision of cause list, no one appears for the Union of India, hence we proceed to decide the question raised by the petitioner's counsel with the assistance of the learned Additional Chief Standing Counsel representing the State of U.P.

8. Parliament enacted the Act keeping in view large number of cases relating to service matters of the Members of Armed Forces pending in the Courts for long time. Hon'ble Supreme Court also expressed its opinion for constitution of Armed Forces Tribunals which was considered by the Parliament and consequently, the Act has been enacted. Statement of objects and reasons of the Act is reproduced as under:

The existing system of administration of justice in the Army and Air Force provides for submission of statutory complaints against grievances relating to service matters and pre and post confirmation petitions to various authorities against the findings and sentences of Court-martial. In Navy, an aggrieved person has a right to submit a complaint relating to service matters and has a right of audience before the Judge Advocate General in the Navy in regard to the finding and sentence of a Court-martial before the same are finally put up to the Chief of the Naval Staff.

2. Having regard to the fact that a large number of cases relating to service matters of the members of the abovementioned three armed forces of Union have been pending in the Courts for a long time, the question of constituting an independent adjudicatory forum for the Defence Personnel has been engaging

the attention of the Central Government for quite some time. In 1982, the Supreme Court in *Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others*, held that the absence of even one appeal with power to review evidence, legal formulation, conclusion and adequacy or otherwise of punishment in the laws relating to the armed forces was a distressing and glaring lacuna and urged the Government to take steps to provide for at least one judicial review in service matters. The Estimates Committee of the Parliament in their 19th Report presented to the Lok Sabha on 20th August, 1992 had desired that the Government should constitute an independent statutory Board or Tribunal for service personnel.

3. In view of the above, it is proposed to enact a new legislation by constituting an Armed Forces Tribunal for adjudication of complaints and disputes regarding service matters and appeals arising out of the verdicts of the Courts-martial of the members of the three service (Army, Navy and Air Force) to provide for quicker and less expensive justice to the members of the said Armed Forces of the Union.

4. Establishment of an independent Armed Forces Tribunal will fortify the trust and confidence amongst members of the three services in the system of dispensation of justice in relation to their service matters.

5. The Bill seeks to provide for a judicial appeal on points of law and facts against the verdicts of Courts-martial which is a crying need of the day and lack of it has often been adversely commented upon by the Supreme Court. The Tribunal will oust the jurisdiction of all Courts except the Supreme Court whereby resources of the Armed Forces in terms of manpower, material and time will be conserved besides resulting in expeditious disposal of the cases and reduction in the number of cases pending before various Courts. Ultimately, it will result in speedy and less expensive dispensation of justice to the Members of the abovementioned three Armed Forces of the Union.

6. The Notes on clauses explain in detail the various provisions contained in the Bill.

7. The Bill seeks to achieve the above objectives.

9. From the objects and reasons, it is borne out on the face of record that the intention of the Legislature is to provide an alternative forum which may decide all service matters of Army personnel efficaciously so that their service career may not be affected adversely. Sub-section (n) and (o) of Section 3 of the Act defines service and service matters. For convenience, they are reproduced as under:

(n) "service" means the service within or outside India;

(o) "service matters", in relation to the persons subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 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) orders 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;

10. It has been settled by a Division Bench of this Court, judgment of which was delivered by one of us (Hon'ble Devi Prasad Singh, J.) in a case in Vishwanath Chaturvedi v. Union of India and others, 2010 ADJ 504, that the object and reasons of a statute may be taken into account during the course of statutory interpretation in the event of doubt or to gather the intention of Legislature.

11. A plain reading of the aforesaid provision reveals that service matters includes remuneration, post-retirement benefits, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, termination of service etc. Clause (iv) of Sub-section (o) further expands the definition of service matters and provides "any other matter, whatsoever. Clause (iv) is exhaustive in nature and covers all service matters with exception to the items contained in Sub-clause (i), (ii), (iii) and (iv). Thus, Legislature to their wisdom has included all matters which correlate to service matters or incident of service of the army personnel except the exception provided in the Act itself.

12. Section 14 of the Act further provides that the tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority, exercisable immediately before that day by all Courts in relation to all service matters. For convenience, Section 14 of the Act is reproduced as under:

14. Jurisdiction, powers and authority in service matters.--(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 immediately before that day by all Courts (except the Supreme Court or a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation

to all service matters.

(2) Subject to the other provisions of this Act, a person aggrieved by an order pertaining to any service matter may make an application to the Tribunal in such form and accompanied by such documents or other evidence and on payment of such fee as may be prescribed.

(3) On receipt of an application relating to service matters, the Tribunal shall, if satisfied after due inquiry, as it may deem necessary, that it is fit for adjudication by it, admit such application; but where the Tribunal is not so satisfied, it may dismiss the application after recording its reasons in writing.

(4) For the purpose of adjudicating an application, the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, (5 of 1908) while trying a suit in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872, (1 of 1872). requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing an application for default or deciding it ex parte;

(h) setting aside any order of dismissal of any application for default or any order passed by it ex parte; and

(i) any other matter which may be prescribed by the Central Government.

(5) The Tribunal shall decide both questions of law and facts that may be raised before it.

13. According to Maxwell, the golden rule of interpretation is to adhere to the ordinary meaning of the words used unless it is in direct conflict with the intention of the Act. In this connection, the author in his book "Interpretation of Statutes" (12th Edition) observes thus:

It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express.

The authorities-on the question of interpretation of the constitutional provisions may roughly be divided into four categories which may not exactly be absolutely

separate or independent so as to be confined in a watertight compartment but in some cases may overlap, yet they generally lay down the law on the subject categorised by us:

Categories

(A) Where the language of a statute is plain, explicit and unambiguous, no external aid is permissible.

(B) Where the language is vague and ambiguous or does not clearly spell out the object and the spirit of the Act, external aids in the nature of parliamentary debates, reports of Drafting or Select Committees may be permissible to determine and locate the real intention of the legislature.

(C) Where certain words are omitted from the statute, the Court cannot supply the omission or add words to the statute on a supposed view regarding the intention of the legislature.

(D) Any speech made by a Minister or a Member in the Parliament is not admissible or permissible to construe a statutory or a constitutional provision.

Relevant portion from to Maxwell on the Interpretation of Statutes (12th edition page 36) is reproduced as under:

A construction which would leave without effect any part of the language of a statute will normally be rejected. Thus, where an Act plainly gave an appeal from one quarter sessions to another, it was observed that such a provision, though extraordinary and perhaps an oversight, could not be eliminated.

14. Hon"ble Supreme Court in a case in *State v. Govindan Thampi Bhaskaran Thampi*, AIR 1957 SC 29, observed that resort to the history of the legislation to construe the meaning of any provision therein is more often taken exception to than not. At the same time it is common knowledge that when the words of a statute are ambiguous, attempts are not infrequently made to ascertain their true meaning by reference to the state of the law at the time the statute was passed, the mischief sought to be avoided and the stages through which the concerned legislation passed.

15. Allahabad High Court in a case *Kunwar Murli Manohar Vs. State of Uttar Pradesh and Others*, , observed that in the interpretation of a statute, the history of the legislation and the surrounding circumstances which existed at the time and demanded a change of law or the enactment of a new one, can all be taken into consideration.

16. Privy Council in *Emperor v. Benoari Lal*, 1913 PC 36, held that the history of legislation and the facts which give rise to the enactment may usefully be employed to interpret the meaning of the statute, though they do not afford a conclusive argument.

17. In *Dadi Jagannadham Vs. Jammulu Ramulu and Others*, , while interpreting a

statute the Court must start with the presumption that legislature did not make any mistake and must interpret so as to carry out the obvious intention of legislature, it must not correct or make up a deficiency, neither add nor read into a provision which are not there particularly when literal reading leads to an intelligent result.

18. In *Delhi Fin. Corpn. and Another Vs. Rajiv Anand and Others*, , it has been observed that the legislature is presumed to have made no mistake and that it intended to say what it said. Assuming there is a defect or an omission in the words used by the legislature, the Court cannot correct or make up the deficiency, especially where a literal reading thereof produces an intelligible result the Court is not authorized to alter words or provide a *casus omissus*.

19. In *Deewan Singh and Others Vs. Rajendra Pd. Ardevi and Others*, , Hon"ble Supreme Court held that while interpreting a statute the entire statute must be first read as a whole then, section by section, clause by clause, phrase by phrase and word by word the relevant provision of statute must thus read harmoniously.

20. Now it is trite in law that while construing an Act, Rule or Regulation each and every word, every line, para should be given meaning and considered in its totality and not in piecemeal vide *Grasim Industries Ltd. Vs. Collector of Customs, Bombay*, ; *Basland Combines v. C.C.E.*, 2003 SCC (1) 410; *A.N. Roy, Commissioner of Police and Another Vs. Suresh Sham Singh, and Deewan Singh and Others Vs. Rajendra Pd. Ardevi and Others*, .

21. The law is very well-settled that when the language of the statute is clear and unambiguous, then *casus omissus* cannot be supplied vide *State of Madhya Pradesh Vs. Azad Bharat Finance Co. and Another*, , *Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another*, , *Commissioner of Income Tax, Central, Calcutta Vs. National Taj Traders*, , *R. Rudraiah and Another Vs. State of Karnataka and Others*, , *Molar Mal (Dead) Through L.Rs. Vs. M/s. Kay Iron Works(P) Ltd.*, ; *Padmasundara Rao and Others Vs. State of Tamil Nadu and Others*, and *Modern School Vs. Union of India (UOI) and Others*, .

22. In view of above, while interpreting the provisions contained in Section 3(o) of the Act, the provisions contained in Clause (iv) containing the words, "any other matter, whatsoever," cannot be excluded. In case these words are not taken into account, it shall make Clause (iv) redundant which is not permissible under Interpretative jurisprudence.

23. Learned counsel for the petitioner further invited attention to Section 84 of the Army Act, 1950, under which the punishment of severe reprimand has been provided. For convenience, Section 84 of the Army Act is reproduced as under:

84. Punishment of officers, junior commissioned officers and warrant officers by area commanders and others.-- An officer having power not less than an area commander or an equivalent commander or an officer empowered to convene a general Court-martial or such other officer as is, with the consent of the Central

Government, specified by [the Chief of the Army Staff] may, in the prescribed manner, proceed against an officer below the rank of lieutenant-colonel, a junior commissioned officer or a warrant officer, who is charged with an offence under this Act, and award one or more of the following punishments, that is to say,--

(a) forfeiture of seniority, or in the case of any of them whose promotion depends upon length of service, forfeiture of service for the purpose of promotion for a period not exceeding twelve months, but subject to the right of the accused previous to the award to elect to be tried by a Court-martial;

(b) severe reprimand or reprimand;

(c) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

24. A plain reading of the aforesaid provision reveals that it is not covered by the exception provided under Clause (iv) of sub-section (o) of Section 3 of the Act. Accordingly, it was not open for the Armed Forces Tribunal to remand back the case to the High Court. The tribunal has been failed to exercise jurisdiction vested in it. The jurisdiction conferred by the statute cannot be diluted or interpreted otherwise by applying the principle of reading down. In case the order of the Principal Bench of Armed Forces Tribunal, New Delhi is upheld, it shall amount to supply of cautious omission to Section 3 of the Act and deprive the right of army personnel to approach the tribunal for expeditious disposal of a dispute relating to the punishment awarded to them.

25. The punishment of "severe reprimand" affect the service career of the army personnel. Even under dictionary meaning, the punishment of "severe reprimand" shall be service matter and be amenable before Armed Forces Tribunal constituted under the Act. In view of above, keeping in view statutory mandate as well as the provisions contained in Section 84 of the Army Act, 1950, the punishment of "severe reprimand" shall be deemed to be a punishment and fall under the category of "service matter" as defined by Section 3 of the Act and can be impugned before the Armed Forces Tribunal in pursuance to the provisions contained in the Act.

With great respect, we are not in agreement with the interpretation given by the Armed Forces Tribunal, Principal Bench, Delhi for the reasons assigned hereinabove. Let the records be remitted back to the Regional Bench of Armed Forces Tribunal, Lucknow within two weeks from today to decide the petition on merit, expeditiously, say within a period of three months from the date of production of a certified copy of the present order/judgment.

Issue raised is decided accordingly.

Let a copy of the judgment be sent to the Chairman, Principal Bench, Armed Forces Tribunal, New Delhi within two weeks.