
(2015) 12 AHC CK 0122
In the Allahabad High Court
Case No : Service Single No. 6239 of 2015

Union of India

APPELLANT

Vs

Armed Forces Tribunal and Others

RESPONDENT

Date of Decision : 08-12-2015

Acts Referred:

Armed Forces Tribunals Act, 2007 — Section 14, 15, 30, 30(1)
Constitution of India, 1950 — Article 226, 227, 227(4)

Citation : (2015) 12 AHC CK 0122

Hon'ble Judges : Rajan Roy, J.

Bench : Single Bench

Advocate : Raj Kumar Singh, for the Appellant; Ashish Kumar Mishra, Piyush Sharma and Vivek Raj Singh, for the Respondent

Final Decision : Disposed Off

Judgement

Rajan Roy, J.—This writ petition has been passed by the Reporting Section as cognizable by a "Single Judge Bench" assigned "Service Single matters", accordingly it has been placed before this court.

2. Heard.

3. Impleadment application is allowed.

4. Let the necessary correction/impleadment be made in the memo of the writ petition.

5. Considering the order proposed to be passed, notice need not be issued to the newly impleaded opposite parties, as they are already arrayed in the original application before the Tribunal.

6. Sri Raj Kumar Singh, learned counsel for the petitioners and Sri Vivek Raj Singh, learned counsel for the opposite party No. 2 are present.

7. Challenge herein is to an interim order 24.9.2015 passed by the Armed Forces Tribunal, Lucknow. The operative portion of which reads as under:

"Keeping in view that prima facie allegations contained in the counter affidavit establish a case of impropriety and obscene act punishable under penal law, it shall be appropriate for the Chief of the Army Staff to hold an enquiry with regard to allegations contained in Original Application as well as rejoinder affidavit. In case they are found to be true, respondent No. 4 seems to lose his grace to hold active rank of Lt. Gen in the Indian Army.

However, we are not recording any final conclusion at this stage, without hearing finally. Conduct of opposite party No. 4 should be enquired by the Chief of Army staff in accordance with Rules.

Accordingly, it is directed that the Chief of Army Staff shall constitute a committee of minimum of three officers to hold enquiry against respondent No. 4. The committee shall submit report/findings within one month. In case any enquiry has already been held, then its report shall be produced before this Tribunal. Chief of the Army Staff shall also submit his report as to what action has been taken with regard to other complaints as informed through Right to Information Act (R.T.I. Act). Copy of present order shall be sent by registry to Defence Secretary as well as Chief of the Army Staff, New Delhi.

List this case on 03.11.2015.

Registry shall issue copy of this order by 29.09.2015 to the learned counsel for the parties free of cost for further action."

8. This court on 2.11.2015 had passed the following order in this writ petition:

"Heard learned counsel for the parties.

Let all the opposite parties who were parties before the Armed Force Tribunal be impleaded in the writ petition.

Let counter affidavit be filed within a period of four weeks.

List thereafter.

It is provided that as far as the impugned order relates to the complaint made by the opposite party No. 2 against Lt. General Arvind Singh Rawat, the same shall continue to operate but the order in so far as it relates to other complaints information of which was provided through the Right to Information Act shall remain stayed.

It is made clear that this Court has not deferred the hearing before the Tribunal in respect to the subject matter in issue before it.

Let a copy of this order be given to the learned counsel for the parties today on usual charges."

9. Contention of Sri Vivek Raj Singh, Advocate, who appears on behalf of opposite party No. 2 is that on account of interim order hearing of the matter before the Tribunal is held up thereby depriving the rights of his client who is to

be considered for promotion and has an unblemished service record, but for the adverse entries against him which are subject-matter of the original application before the Tribunal and that his client is due to retire from service and his IIIrd promotional Board is due in December, 2015.

10. The Armed Forces Tribunal Act 2007 (for short "Act 2007") was promulgated to provide for the adjudication or trial by Armed Forces Tribunal of disputes and complaints with respect to commission, appointments, enrollment and conditions of service in respect of persons subject to the Army Act 1950 etc. and also to provide for appeals arising out of orders, findings or sentences of courts-martial held under the said Acts and for matters connected therewith or incidental thereto.

11. Under section 14 of the Act 2007 save as otherwise expressly provided in the said 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.

12. The opposite party No. 2 herein filed an original application bearing No. 175 of 2014 seeking the following reliefs:

"8. RELIEF SOUGHT

The applicant most humbly prays that the Hon"ble Tribunal may graciously be pleased to grant the following reliefs in the interest of justice:-

(a) issue/pass an order or direction to the respondents to quash/set aside the arbitrary and illegal order dated 10.6.2014 passed by respondent No. 2 to the extent that it does not seek to set aside the entire ACR for the period 7th December 2004 to 31st of May 2005 and 1st June 2005 to 31st May 2006.

(b) issue/pass an order or direction to quash the complete ACR for the period 7th December, 2004 to 31st of May 2005 and 1st June 2005 to 31st May 2006.

(c) issue/pass an order or direction to the respondents to quash/set aside the arbitrary and illegal non-empanelment of the applicant to the rank of Colonel by the selection board.

(d) issue/pass an order or direction to the respondents to consider the applicant for the rank of Colonel afresh after setting aside the ACR for the period from 7th December 2004 to 31st of May 2005 and 1st June 2005 to 31st May 2006.

(e) issue/pass an order or direction to the respondents to consider the applicant for the rank of Colonel with his batch after setting aside the ACR for the period 7th December 2004 to 31st of May 2005 and 1st of June 2005 to 31st May 2006.

(f) issue/pass any other order or direction of this Hon"ble Tribunal may deem fit and proper in the circumstance of the case.

(g) Allow the application with costs."

13. In Para-9 of the original application under the heading "INTERIM ORDER, IF ANY PRAYED FOR" it was mentioned "Not required" and "Not applicable".

14. It appears the opposite party No. 2 herein/applicant before the Tribunal challenged the entries awarded by Sri Arvind Singh Rawat who was then a Colonel and his immediate superior, inter alia, on the ground of mala fide. It was alleged that Sri Rawat had solicited certain indecent favours from the wife of the applicant, failing which adverse entries were made in his character-roll thereby prejudicing his service career. During the pendency of the matter before the Tribunal certain documents were filed containing information from the Army under the Right to Information Act as regards other complaints against Sri Rawat and inquiries made in this regard.

15. It appears that after looking into the allegation made by the applicant and information provided under the Right to Information Act the Tribunal passed the impugned order, operative portion of which had already been quoted hereinabove, thereby inter alia ordering the constitution of a committee of minimum of three officers to hold inquiry against respondent No. 4 (Sri Rawat) and submit a report within one month. In case any inquiry had already been held, its report was also ordered to be produced before the Tribunal. Chief-of-Army-Staff was also required to submit his report as to the action taken with regard to other complaints as informed through the Right to Information Act.

16. The reason this court has entertained this writ petition against the interim order of the Tribunal is that under Section 30 of the Arms Act 2007 an appeal has been provided against a final judgment or order of the Tribunal to the Supreme Court. The words "order" of the Tribunal occurring therein will have the same colour as a final decision, specially as the IInd proviso to Section 30(1) specifically provides that there shall be no appeal against an interlocutory order of the Tribunal. Thus, an appeal under Section 30 to the Supreme Court against an interlocutory order of the Tribunal is barred. It is not out of place to mention that under Article 227(4) of the Constitution of India a petition under the said provision against the order of Armed Force Tribunal is also barred. Faced with this scenario an interlocutory order such as the one impugned herein could neither be challenged before the Supreme Court nor in a petition under Article 227 of the constitution of India. The only remedy available is under Article 226 of the Constitution of India in this regard.

17. This court is conscious of the fact that the High Court is ordinarily not inclined to entertain a writ petition against an interlocutory order, but there is no hard-and-fast rule in this regard. It depends upon the facts of the case and issues involved. Such a writ petition can be entertained if the interim order had been passed in excess of the jurisdiction vested or beyond the reliefs claimed and scope of the proceedings or if there exist other grounds necessitating interference of the High Court and issuance of the writ, order or direction by it.

18. This court has gone through the judgment of the Supreme Court reported in

Union of India (UOI) and Others Vs. Shri Kant Sharma and Others ., and does not find anything therein so as to bar the instant writ petition against an interlocutory order of the Tribunal. The question considered therein was as regards maintainability of the writ petition under Article 226 of the Constitution against the final order of the Tribunal in view of the statutory remedy of appeal as provided before the Supreme Court under Section 30 of the Act 2007.

19. This writ petition raises certain issues relating to the jurisdiction of the Tribunal and the exercise of such jurisdiction as vested in it by the Act 2007. The Tribunal has been constituted under the Act 2007. It can only exercise the jurisdiction vested upon it under the said Act. Section 14 of the Act 2007 very categorically mentions the jurisdiction vested upon it in addition, of course, to its jurisdiction under Section 15 which is not attracted herein. It states that save as otherwise expressly provided therein the Tribunal is vested with all the jurisdiction, powers and authority exercisable immediately before the appointed day by all courts, except the Supreme Court or a High Court exercising jurisdiction under Article 226 and 227 of the Constitution of India in relation to all service matters. Thus, the Tribunal does not exercise the jurisdiction exercisable by the Supreme Court or a High Court under Article 226 or 227 of the Constitution of India in relation to such service matters. The subject-matter of the original application before the Tribunal was the validity of two A.C.Rs. relating to 2005-06 awarded to the applicant. In this context certain allegations of mala fide were made against the respondent No. 4 therein i.e. Sri Rawat. The Tribunal had jurisdiction to consider the validity of the action impugned before it and in that context to also consider the allegations of mala fide, but in the absence of any prayer either, final or interim, for getting an inquiry held in respect to the allegations/complaints against the respondent No. 4 therein the Tribunal should not have issued such a direction, specially at the interim stage, as the applicant himself has stated in the original application that he does not require any interim relief. The directions issued by means of the impugned order dated 24.9.2015 are beyond the scope of the original application and the relief claimed therein. The question as to whether even if such a relief was claimed, the same could be considered and granted by the Tribunal, is left open for consideration in some other case. While the court understands the anxiety and feelings of the Tribunal as expressed in the impugned order, it is unable to sustain the directions given by it, except to the extent that it could have summoned the decision taken on the complaint made by the applicant before it.

20. In these circumstances the interim order dated 24.9.2015 insofar as it directs the inquiry by a committee to be constituted by the Chief-of-Army-Staff in respect to the complaint of the applicant before it and further directs the Chief-of-Army-Staff to submit his report as regards the action taken with regard to other complaints as informed through the Right to Information Act, cannot be sustained, the same is accordingly quashed.

21. It is, however, provided that the respondents before the Tribunal shall place

before the Tribunal the action/decision taken on the complaint of the applicant against the respondent No. 4 and such decision as may have been taken pertaining to other complaints against him as may be demanded by the Tribunal which may be relevant for adjudication of the case.

22. This order does not absolve the petitioners herein/opposite parties before the Tribunal from taking such action as they are under an obligation under the Army Act or any other provision of law, to take in respect of such complaints/allegations. In fact, they are bound to discharge their statutory obligations in this regard.

23. It shall be open for the Tribunal to decide the matter finally, uninfluenced by any observation made hereinabove.

24. Considering the assertions of Sri Singh that the Promotion Board is to take place in December 2015 itself, it is provided that the matter shall be posted before the Tribunal on 17.12.2015 for further proceedings in the matter.

25. This writ petition is disposed of in the aforesaid terms.