

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11758 of 1998

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Rama Kant Goshwami, Son of late Gaya Deyal Goshwami, resident of
Village-Deoar, Police Station-Sandesh, District-Bhojpur

.... Petitioner/s

Versus

1. The Union of India through Defence Secretary, Department of Government of India, New Delhi
2. The Secretary, Department of Defence, Government of India, New Delhi
3. Chief of the Army Staff, Army Headquarter and A.G.S. Branch D.H.O, New Delhi.
4. Headquarters, Central Command(A), Lucknow
5. Commandant, Bihar Regimental Centre, Danapur Cant. Patna, Bihar
6. Shri B.K. Sharma, Lieutenant Colonel, Administrative Battalion, Bihar Regiment Centre, Danapur, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bishnu Kant Dubey

For the Respondent/s : Mr. Rajesh Kumar Verma, CGC

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH

ORAL JUDGMENT

9 20-03-2015

1. Heard Mr. Bishnu Kant Dubey, learned counsel appearing on behalf of the petitioner and Mr. Rajesh Kumar Verma, learned counsel appearing on behalf of Central Government Counsel.

2. The petitioner in the present writ application under Article 226 of the Constitution of India seeks quashing of the sentence and punishment awarded against him in a summary Court martial whereby, he has been dismissed from service and has been awarded rigorous imprisonment for one year.

3. During the pendency of the writ application, Armed

Forces Tribunal Act, 2007 (hereinafter referred to as the Act) came to be enacted providing for establishment of Armed Forces Tribunal by the Central Government.

4. Section 15 of the said Act deals with the jurisdiction, power and authority in the matters of appeal against Court martial. Section 34 of the Act provides for transfer of pending cases including suits and other proceedings before any Court including a High Court.

5. Section 34 of the Act reads thus:-

“34. Proceeding 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.”

6. Learned counsel appearing on behalf of the Union of India has relied upon decisions of this Court in case of Union of India Vs. Col. Sarat Chandra Mishra reported in 2012(2) PLJR 101 as well as 2012 (3) PLJR 805 (Union of India Vs. Ajay Kumar) in support of his plea that by operation of Section 34 of the Act, the present writ application stands transferred to the Tribunal.

7. I find the submission made on behalf of the Union of India to be correct.

8. The present writ application stood transferred by operation of Section 34 of the Act. Let the records of the present writ application be forwarded to the Tribunal in terms of Section 34 (2) (a) of the Act.

(Chakradhari Sharan Singh, J)

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