

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP-1484-2000 (O&M)
Date of decision: 17.03.2016

Ex.Naik Inderpal Singh

.....Petitioner

versus

The Secretary, Minister of Defence, Government of India, New
Delhi and and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Pavit Singh Mattewal, Advocate for the petitioner
Mr.Vikas Thakur, Advocate for
Mr.Vivek Singla, Advocate for the respondent

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Arguments on the question of jurisdiction heard.

Learned counsel for the petitioner states that after coming into force of the Armed Forces Tribunal Act, 2007 (in short, 'the 2007 Act'), the present writ petition should be transferred to the Armed Forces Tribunal, as required under Section 34 of the 2007 Act.

The brief facts of the case are that in this case, the present petitioner was tried and convicted by General Court Martial for committing murder of his fellow official. The sentence was later on confirmed. Against that order, the petitioner moved the Chief of Army Staff. The Chief of Army Staff also declined the prayer of the petitioner. Against all the said orders, the petitioner has filed the present writ petition before this Court.

The perusal of Section 14 of the 2007 Act shows that it pertains to service matters. Section 15 of the 2007 Act pertains to the jurisdiction, powers and authority in the matters of appeal against the Court-Martial. Section 15 of the 2007 Act is reproduced as under:-

15. Jurisdiction powers and authority in matters of appeal against court martial : (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 under this Act in relation to appeal against any order, decision, finding or sentence passed by a court martial or any matter connected therewith or incidental thereto.*

(2) *Any person aggrieved by an order, decision, finding or sentence passed by a court martial may prefer an appeal in such form, manner and within such time as may be prescribed.*

(3) *The Tribunal shall have power to grant bail to any person accused of an offence and in military custody, with or without any conditions which it considers necessary: Provided that no accused person shall be so released if there appears reasonable ground for believing that he has been guilty of an offence punishable with death or imprisonment for life.*

(4) *The Tribunal shall allow an appeal against conviction by a court martial where (a) the finding of the court martial is legally not sustainable due to any reason whatsoever; or (b) the finding involves wrong decision on a question of law; or (c) there was a material irregularity in the course of the trial resulting in miscarriage of justice, but, in any other case, may dismiss the appeal where the Tribunal considers that no miscarriage of justice is likely to be caused or has actually resulted to the appellant: Provided that no order dismissing the appeal by the Tribunal shall*

be passed unless such order is made after recording reasons therefor in writing.

(5) The Tribunal may allow an appeal against conviction, and pass appropriate order thereon.

(6) Notwithstanding anything contained in the foregoing provisions of this section, the Tribunal shall have the power to— (a) substitute for the findings of the court martial, a finding of guilty for any other offence for which the offender could have been lawfully found guilty by the court martial and pass a sentence afresh for the offence specified or involved in such findings under the provisions of the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950, (45 of 1950) as the case may be; or (b) if sentence is found to be excessive, illegal or unjust, the Tribunal may— (i) remit the whole or any part of the sentence, with or without conditions; (ii) mitigate the punishment awarded; (iii) commute such punishment to any lesser punishment or punishments mentioned in the Army Act, 1950, (46 of 1950) the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950, (45 of 1950) as the case may be; (c) enhance the sentence awarded by a court martial: Provided that no such sentence shall be enhanced unless the appellant has been given an opportunity of being heard; (d) release the appellant, if sentenced to imprisonment, on parole with or without conditions; (e) suspend a sentence of imprisonment; (f) pass any other order as it may think appropriate.

(7) Notwithstanding any other provisions in this Act, for the purposes of this section, the Tribunal shall be deemed to be a criminal court for the purposes of sections 175, 178, 179, 180, 193, 195, 196 or 228 (45 of 1860) of the Indian Penal Code and Chapter XXVI of the Code of Criminal Procedure, 1973. (2 of 1974) “

Section 164 of the Army Act, 1950 (in short, the 1950 Act') provides as under:-

“164. Remedy against order, finding or sentence of court-martial - (1) Any person subject to this Act who considers himself aggrieved by any order passed by any court-martial may present a petition to the officer or authority empowered to confirm any finding or sentence of such court-martial, and the confirming authority may take such steps as may be considered necessary to satisfy itself as to the correctness, legality or propriety of the order passed or as to the regularity of any proceeding to which the order relates.

(2) Any person subject to this Act who considers himself aggrieved by a finding or sentence of any court-martial which has been confirmed, may present a petition to the Central Government, the Commander in Chief or any prescribed officer superior in command to the one who confirmed such finding or sentence, and the Central Government, the Commander in Chief or other officer, as the case may be, pass such order thereon as it or he thinks fit.”

It goes to show that the remedy availed before the Chief of Army Staff under Section 164 of the 1950 Act strictly speaking is not an appeal.

Learned counsel for the petitioner wants that this writ petition be treated as an appeal against the findings of the General Court-Martial, confirmation order and the order passed by the Chief of Army Staff. Therefore, same be sent to the Armed Forces Tribunal.

The opposite counsel has no objection to the same.

In view of the law discussed above, the present petition being practically an appeal against the findings of the General Court-

Martial, confirmation order and the order passed by the Chief of Army Staff stands transferred to the Armed Forces Tribunal, Chandigarh Bench at Chandimandir.

Both the parties are directed to put in appearance before the Armed Forces Tribunal, Chandigarh Bench at Chandimandir on 8.4.2016.

The Registry is directed to send the file to the Armed Forces Tribunal, Chandigarh Bench at Chandimandir before the date fixed.

17.03.2016
gk

(Kuldip Singh)
Judge