

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

**IA No: CAN/2/2013 (Old No:CAN/6148/2013),
[CAN not in file], CAN /3/2019 (Old No:CAN/12476/2019)**

WPA/4335/1996

Sri Bomkesh Deb

-Versus-

**G.O.C-in-Charge, Eastern Command Fort
William & Ors.**

For the petitioner: Mr. Sudipta Dasgupta, Adv.,
Mr. Arkadeb Biswas, Adv.

Heard on: September 24, 2021.

Judgment on: September 24, 2021.

BIBEK CHAUDHURI, J. : –

The petitioner, was appointed as a civilian driver and was promoted to Grade-II. In the month of February, 1994 he was attached with 5033, A.S.C Bn. (M.T), at Sukna within the district of Darjeeling. On 4th February, 1994 he was served with a charge-sheet for dereliction of his duty. On the basis of the said charge-sheet he was arrested and detained in the military custody. During the period of detention, he was placed in Court Martial. The proceedings of the Court Martial conducted in a summary procedure. The petitioner was not allowed to be represented by his authorized representative or his Advocate or even personally. By an

arbitrary action and purported Court Martial, he was dismissed from service.

The said order of dismissal was challenged in the instant writ petition by invoking the jurisdiction under Article 226 of the Constitution.

Learned Advocate for the petitioner fairly submits that in view of the Armed Forces Tribunal Act, which came into force with effect from 15th June, 2008 the Armed Forces Tribunal has been given jurisdiction to hear out an appeal against any decision, finding or sentence passed by the Court Martial or any matter connected therewith or incidental thereto in support of his contention he refers to Section 15 of the Armed Forces Tribunal Act, 2007 which runs thus:-

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 of the Indian Penal Code (45 of 1860) and Chapter XXVI of the Code of Criminal Procedure, 1973.

In view of such provision contained in the Armed Forces Tribunal Act, 2007, on the date of final hearing of the instant writ petition, this Court has no jurisdiction to decide the question as to whether the impugned order passed in Court Martial against the petitioner is violative of any of the fundamental or legal rights.

Accordingly, the instant writ petition is dismissed being not maintainable.

However, the petitioner is at liberty to file an appeal before the tribunal, if he is so advised, subject to the Law of Limitation, if any.

(Bibek Chaudhuri, J.)