

**CALCUTTA HIGH COURT  
IN THE CIRCUIT BENCH AT JALPAIGURI  
APPELLATE SIDE**

*Present:*

***The Hon'ble Justice Debangsu Basak***

*And*

***The Hon'ble Justice Bibhas Ranjan De***

***MAT 19 of 2021  
With  
IA No. CAN 1 of 2021***

***Col. Nikhil Pareek  
VS.  
Union of India & Ors.***

For the Appellant : Mr. Joyjit Choudhury  
Mr. Ajay Singhal, Advocates

For the  
Respondents : Mr. Sudipto Kumar Mazumdar, Id. Asst. S.G  
Mr. Ajoy Kumar Singhania  
Mr. Sourab Kar, Advocates

Hearing concluded on : June 14, 2022

Judgment on : **June 14, 2022**

**DEBANGSU BASAK, J.**

**1.** The appeal is directed against an order dated February 8, 2021 passed in WPA 124 of 2021 with IA no. CAN 1 of 2021. By the impugned order, the learned Judge was pleased to not to entertain the writ petition on the ground that the writ

petitioner possessed an alternative efficacious remedy in the form of Armed Forces Tribunal.

**2.** Aggrieved by such order, the present appeal is at the behest of the writ petitioner.

**3.** Learned advocate appearing for the appellant submits that as on the date of filing of the writ petition and till date, the Kolkata Armed Forces Tribunal, Regional Bench is not functioning. He refers to the documents annexed to the affidavit filed on behalf of the respondents affirmed on June 10, 2022 and submits that, none of the notices annexed to such affidavit, establishes by any stretch of imagination that, the Regional Bench, Kolkata of the Armed Forces Tribunal is functioning. He refers to the provisions of the Armed Forces Tribunal Act, 2007. He draws the attention of the Court to Sections 5, 7 and 20 of the Act of 2007. He draws the attention of the Court to the notices annexed to the affidavit of the respondents affirmed on June 10, 2022. He submits that the two members said to constitute the Kolkata Regional Bench, Armed Forces Tribunal by the notices is not a constitution of the Bench in accordance with law. He refers to

the powers of the Chairperson. He submits that under Section 5 of the Act of 2007, the Chairperson of the Armed Forces Tribunal may discharge the functions of a member of any other Bench than the principal Bench but such Chairperson should be considered as an Administrative Member in terms of Section 5(3) (a) of the Act of 2007. He refers to Section 7 of the Act of 2007. He contends that, any member, be it a Judicial member or an Administrative member to the Bench is appointed by way of an notification. The two members spoken of in the notices relating to the Kolkata Regional Bench of the Armed Forces Tribunal as relied upon by the respondents were not notified to be members of the Kolkata Regional Bench. Therefore, according to him, the Chairperson cannot constitute the Kolkata Regional Bench by way of transfer of any member from any other Bench to the Kolkata Regional Bench. He refers to Section 20 of the Act of 2007 and submits that, Section 20 of the Act of 2007 does not vest the Chairperson with the power to appoint a member to the Kolkata Regional Bench.

4. Learned Advocate for the appellant relies upon **(2020) 2 SCC 442 (Balkrishna Ram vs. Union of India & Anr.)** for the proposition that where statutory alternative efficacious remedy is not available, the High Court can exercise powers under Article 226 of the Constitution of India.

5. Learned Assistant Solicitor General appearing for the respondents submits that, the Kolkata Regional Bench was and is functioning from time to time. In support of such contentions he relies upon notices and the cause list of the Kolkata Regional Bench issued from time to time. He submits that matters are being dealt with either on the virtual platform or offline mode as the situation demands. The appellant as the writ petitioner can avail of the jurisdiction of the Kolkata Regional Bench of the Armed Forces Tribunal. There is no impediment in the appellant/writ petitioner approaching the Kolkata Regional Bench of the Armed Forces Tribunal. The disputes which are subject matter of the writ petition are governed by the Act of 2007. The appellant/writ petitioner is not without any remedy. The Act of 2007 provides adequate

and efficacious remedies to the appellant/writ petitioner, if the fact situation so deserved.

**6.** Referring to the provisions of the Act of 2007 and the notices annexed to the affidavit of the respondents dated June 10, 2022, he submits that, the Chairperson is entitled to transfer a member from one Bench to the other Bench. In the facts of the present case, the Chairperson in his wisdom transferred a Judicial member and an Administrative member to take up matters relating to the Kolkata Regional Bench from time to time. There is no infirmity in the composition of the Kolkata Regional Bench by the Chairperson as appearing from notices annexed to the affidavit affirmed on June 10, 2022. Therefore, the contention of the appellant/writ petitioner that there is no Kolkata Regional Bench of the Armed Forces Tribunal is misplaced.

**7.** Learned Assistant Solicitor General relies upon **2019 SCC OnLine Cal 3623 [Maj. Harsh Vardhan Singh vs. Union of India and others]** and submits that, issues sought to be raised by the appellant/writ petitioner were dealt with by such judgment. He submits that the co-ordinate Bench therein

recognized that a Regional Bench can function intermittently and that a Regional Bench can be constituted by members from other Benches of the Armed Forces Tribunal.

**8.** Appellant/writ petitioner, in reply, submits that the ratio of **Maj. Harsh Vardhan Singh** (supra) was considered by the co-ordinate Bench on April 29, 2021 and an interim order in the writ petition was granted on April 21, 2021.

**9.** The appellant/writ petitioner is facing General Court Marshal under the provisions of the Arms Act, 1950.

**10.** Aggrieved by the action taken by the Armed Forces Authorities as against the appellant/writ petitioner under the provisions of the Act of 1950, the appellant/writ petitioner approached the writ Court by way of WPA 124 of 2021. Such writ petition was not entertained by the impugned judgment and order dated February 8, 2021 on the finding that, there is a statutory alternative remedy under the provisions of Act of 2007 available to the appellant/writ petitioner. Aggrieved by such order, the appellant/writ petitioner preferred the instant appeal.

**11.** In the instant appeal, there was an interim order dated April 21, 2021 directing stay of the General Court Marshal proceeding till further order or one week after commencement of the next Circuit Bench whichever is earlier. From time to time such interim order was extended. The interim order is subsisting till date. Confronted with the contention that, there was no subsisting Kolkata Regional Bench of the Armed Forces Tribunal, an affidavit was called for from the answering respondents with regard to such issue by the order dated June 9, 2022.

**12.** Pursuant to such direction, an affidavit affirmed on June 10, 2022 is sought to be relied upon by the answering respondents. The appellant/writ petitioner used an affidavit dealing with the contentions of the affidavit of the answering respondents dated June 10, 2022. The affidavit dated June 10, 2022 of the answering respondents contains various documents including notices dated July 12, 2021, February 15, 2021, April 26, 2022 and May 30, 2022. It appears from such documents that two members of the Armed Forces Tribunal are available for the purpose of constituting the

quorum of the Kolkata Regional Bench of the Armed Forces Tribunal. The last of the notices is dated May 30, 2022 which states that Hon'ble Mrs. Justice (Retd.) Anjana Mishra, Judicial Member, Armed Forces Tribunal, Principal Bench, New Delhi and Hon'ble Lt. Gen (Retd.) Bobby Cherian Mathews, Administrative Member, Armed Forces Tribunal, Regional Bench, Chennai will constitute the Kolkata Regional Bench of the Armed Forces Tribunal and will be available on June 1, 2022 at 3 PM on the virtual platform.

**13.** Learned advocate appearing for the appellant/writ petitioner contends that such composition is not in accordance with Sections 5, 7 and 20 of the Act of 2007.

Sections 5, 7 and 20 of the Act of 2007 are as follows :-

- “5. Composition of Tribunal and benches thereof.-*** (1) *The Tribunal shall consist of a Chairperson, and such number of Judicial and Administrative members as the Central Government may deem fit and, subject to the other provisions of this Act, the jurisdiction, powers and authority of the Tribunal may be exercised by Benches thereof.*
- (2) *Subject to the other provisions of this Act, a Bench shall consist of one Judicial Member and one Administrative Member.*
- (3) *Notwithstanding anything contained in sub-section (1), the Chairperson –*
- (a) *may, in addition to discharging the functions of a Judicial Member of the Bench to which he is appointed, discharge the functions of an Administrative Member of any other Bench;*
- (b) *may transfer a Member from one Bench to another Bench;*

- (c) *may, for the purpose of securing that any case or cases, which having regard to the nature of the questions involved, requires or require, in his opinion, or under the rules made under this Act, to be decided by a Bench composed of more than two members, issue such general or special orders, as he may deem fit:*  
*Provided that every Bench constituted in pursuance of this clause shall include at least one Judicial Member and one Administrative Member.*
- (4) *Subject to the other provisions of this Act, the Benches of the Tribunal shall ordinarily sit at Delhi (which shall be known as the Principal Bench), and at such other places as the Central Government may, by notification, specify.*

**7. Appointment of Chairperson and other Members.-**

*(1) Subject to the provisions of this section, the Chairperson and other Members of the Tribunal shall be appointed by the President:*

*Provided that no appointment under sub-section shall be made except after consultation with the Chief Justice of India*

*(2) The President may appoint one or more Members of the Tribunal to be the Vice-Chairperson, or, as the case may be, the Vice-Chairpersons, thereof.*

**20. Distribution of business among the Benches.-** *The Chairperson may make provisions as to the distribution of the business of the Tribunal among its Benches."*

**14.** Section 5 of the Act of 2007 deals with the composition of Tribunal and Benches thereof. Sub-section (1) of Section 5 of the Act of 2007 stipulates that the Armed Forces Tribunal shall consists of a Chairperson and such number of judicial and Administrative Members as the Central Government may deem fit and subject to the other provisions of the Act of 2007 the jurisdiction, powers and authority of the Tribunal may be exercised by the Regional Benches. Sub-Section (2) of Section

5 of the Act of 2007 stipulates that a Bench shall consist of one Judicial Member and one Administrative Member, subject to any provision of the Act of 2007 to the contrary. Therefore, subject to any provision under the Act of 2007, to the contrary, a Bench under the Act of 2007 must consists of one Judicial Member and one Administrative Member to form the quorum. Sub-section (3) of Section 5 of the Act of 2007 opens with a *non-obstante* clause which stipulates that notwithstanding anything contained in sub-section (1) of Section 5 of the Act of 2007, the Chairperson may, in addition to discharging the functions of a Judicial member of the Bench to which he is appointed, discharge the functions of an Administrative Member of any other Bench. He may transfer a Member from one Bench to another Bench. The Chairperson may, for the purpose of securing that any case or cases, which having regard to the nature of the questions involved, requires or require, in his opinion, or under the rules made under the Act of 2007, to be decided by a Bench composed of more than two members, issue such general or special orders, as he may deem fit. The proviso to sub-clause (c) provides that every

Bench constituted in pursuance of this clause shall include at least one Judicial Member and one Administrative Member. Section 7 of the Act of 2007 deals with the appointment of Chairperson and other Members. Section 20 of the Act of 2007 empowers the Chairperson to distribute the business of the Tribunal amongst the Benches.

**15.** The initial appointment of Hon'ble Mrs. Justice (Retd.) Anjana Mishra, as a Judicial Member of the Armed Forces Tribunal, Principal Bench, New Delhi and Hon'ble Lt. Gen (Retd.) Bobby Cherian Mathews, as the Administrative Member of the Armed Forces Tribunal, Regional Bench, Chennai are not under challenge in the writ petition or in the present appeal. These two persons are members of the Armed Forces Tribunal, with being the Judicial member of in the Principal Bench and the other being the Administrative Member of the Chennai Regional Bench.

**16.** By the last notice dated May 30, 2022, the Chairperson in his wisdom constituted the Kolkata Regional Bench to compose of Hon'ble Mrs. Justice (Retd.) Anjana Mishra, Judicial Member, Armed Forces Tribunal, Principal Bench,

New Delhi and Hon'ble Lt. Gen (Retd.) Bobby Cherian Mathews, Administrative Member, Armed Forces Tribunal, Regional Bench, Chennai.

**17.** Clause (c) of sub-section (3) of Section 5 of the Act of 2007 empowers the Chairperson to transfer a member from one Bench to the other. Moreover, a Bench must consist of one Judicial Member and one Administrative Member in terms of Section 5 of the Act of 2007. In the present case, therefore, there is one Judicial Member and one Administrative Member so far as the Kolkata Regional Bench of the Armed Forces Tribunal is concerned. Such composition is on the basis of the transfer made by the Chairperson of the Armed Forces Tribunal exercising powers under Section 5(3)(b) of the Act of 2007.

**18.** In such conspectus, we do not find any material to hold that the Kolkata Regional Bench, Armed Forces Tribunal is not functioning.

**19.** It is trite law that where there exists a statutory efficacious alternative remedy, the Writ Courts are slow to entertain a writ petition.

**20.** The issues sought to be raised by the appellant/writ petitioner can be effectively and efficaciously looked into, considered and decided upon by the Armed Forces Tribunal.

**21. Bal Krishna Ram** (supra) considered an issue as to whether an appeal against an order of Single Judge of a High Court deciding a case relating to an Armed Forces Personnel pending before the High Court is required to be transferred to the Armed Forces Tribunal or should be heard by the High Court. It answered the question by holding that, an appeal from an order passed by a learned Single Judge of the High Court was before the Division Bench of such High Court and not to the Armed Forces Tribunal and that such appeal cannot be transferred to the Armed Forces Tribunal. The facts pertaining to the present case are absolutely different.

**22.** In **Maj. Harsh Vardhan Singh** (supra), the Coordinate Bench considered an application for contempt. While considering such contempt petition, the Coordinate Bench observed that, the Kolkata Regional Bench of the Armed Forces Tribunal was then functioning intermittently and that,

the Kolkata Regional Bench can be constituted by Members of other Benches of the Armed Forces Tribunal.

**23.** In such circumstances, we find no ground to interfere with the impugned order of the learned Single Judge where His Lordship refused to exercise the discretion by entertaining the writ petition on the ground of existence of statutory alternative remedy.

**24.** Since the interim order is subsisting till the end of July, 2022 and in view of the pandemic situation prevailing in the country, it would be appropriate to limit the interim order subsisting for a period of fortnight from date.

**25.** MAT 19 of 2021 and IA No. CAN 1 of 2021 are **disposed of** accordingly.

**(Debangsu Basak,J.)**

**26.** I agree.

**(Bibhas Ranjan De, J.)**