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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**1) CWP-3118-2023
Date of Decision:03.10.2023**

NK SANTOSH LOHAR Petitioner

Versus

UNION OF INDIA AND ORS. Respondents

2) CWP-25737-2019

BHIM SINIGHPetitioner

Versus

UNION OF INDIA AND OTHERSRespondents

3) CWP-7130-2023

DHARMENDRA KUMAR SINGHPetitioner

Versus

UNION OF INDIA AND ANR.Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Abhimanu Jangra, Advocate for
Mr. Ajit Kakkar, Advocate
for the petitioner in CWP-3118-2023.

Mr. Balwinder Singh, Advocate and
Mr. Kunal R. Choksi, Advocate
for the petitioner in CWP-25737-2019.

Mr. Binat Sharma, Advocate
for the petitioner in CWP-7130-2023.

Mr. Karan Kumar Jund, Central Govt. Counsel
for respondents- UOI in CWP-3118-2023.

Mr. Rohit Verma, Advocate
for the respondent-UOI in CWP-25737-2019.

Ms. Anita Balyan, Senior Panel Counsel

for the respondents- UOI in CWP-7130-2023.

JAGMOHAN BANSAL, J. (Oral)

1. By this common order CWP-3118-2023, CWP-25737-2019 and CWP-7130-2023 are disposed of since issue involved in all the petitions and prayer sought are common. With the consent of parties and for the sake of brevity, facts are borrowed from CWP-3118-2023.

2. The petitioner through instant petition under Article 226 of the Constitution of India is seeking setting aside of orders dated 20.09.2018, 15.04.2020 and 31.10.2022 (Anneuxre P-1) whereby petitioner has been awarded punishment of 'Severe Reprimand'.

3. Despite constitution of Armed Forces Tribunal (for short 'Tribunal') for armed forces, the petitioner has invoked writ jurisdiction of this Court on the ground that as per Section 3 (o) of Armed Forces Tribunal Act, 2007 (for short '2007 Act') in case an order of punishment is passed in summary trial and punishment is other than dismissal, Tribunal has no jurisdiction, thus, remedy left is petition under Article 226 of the Constitution of India.

The petitioner is working with Indian Army and by impugned order he has been awarded punishment of 'Severe Reprimand'. The order of punishment has been passed by the Brigadier in exercise of power conferred by Section 80-82 of the Army Act, 1950. It is apt to notice here that petitioner was subjected to minor punishment by following procedure of summary trial.

4. Learned counsel for the petitioner submits that Section 3 (o) of 2007 Act defines expression 'service matters'. In the definition,

punishment of dismissal awarded in summary trial is covered within the definition of 'service matters', however, if the punishment is awarded other than dismissal in summary disposal and trials, it does not fall within the definition of 'service matters'. Similarly, if trial is conducted by summary Court Martial and punishment awarded is other than dismissal from service or imprisonment is less than 3 months, the matter does not fall within the definition of 'service matters'. Section 14 of 2007 Act confers jurisdiction and power upon the Tribunal with respect to 'service matters'. Section 15 of 2007 Act confers jurisdiction and power upon the Tribunal, in respect of matters of appeal against Court Martial. In the case of petitioner, the order has been passed by Brigadier exercising power under Section 80-82 of the Army Act and Brigadier has conducted trial as summary trial, thus, case of the petitioner does not fall within definition of 'service matters' as contemplated by Section 3 (o) read with Section 14 of the 2007 Act. Thus, writ petition is the only remedy with the petitioner.

In support of his contention, learned counsel for the petitioner relies upon para 13 of the judgment of Delhi High Court in *Ex. Link Vishav Priya Singh Vs. UOI 2018 (3) SCT 216*. Para 13 of the judgment reads as:

“13. Having heard the learned counsel for the parties, the first and the foremost issue that needs to be decided is whether the present petition is not maintainable in this Court in view of Section 3(o) of the AFT Act, as it is the submission of Ms. Babbar that the issue herein relates to a service matter that too concerning persons subject to Army Act where the punishment is of dismissal or

imprisonment for more than three months. In that regard, the answer to the said issue lies in her own submission, inasmuch as she had stated that the matters, which shall not have the jurisdiction of AFT, are those relating to Summary Court Martial except where punishment is of dismissal or imprisonment for more than three months. In the case in hand, even though initially it was a case of dismissal with imprisonment of six months, the dismissal was reduced to discharge. Even otherwise, initially the writ petition was disposed of by this court on an issue whether the SCM need to be held by the CO of the unit or any other unit on January 25, 2008. The said order was subject matter of an Appeal before the Supreme Court, which decided the issue vide order dated July 05, 2016 in favour of the respondents but at the same time remanded the matter back to this Court for consideration on merits. The Supreme court having remanded the matter back to this court, this Court shall have the competence to decide the matter on merits. Hence, this plea of Ms. Babbar is rejected.”

He further relies upon different orders passed by different Benches of Tribunal wherein it has been held that Tribunal has no jurisdiction where trial is conducted as summary trial or summary Court Martial and punishment awarded is other than punishment contemplated by Section 3 (o) of 2007 Act. The relevant extracts of the order of Guwahati Bench of the Tribunal in *Ex-Hav/CIK Jayanta Boruah Vs. Union of India and others O.A. No.05 of 2016 (decided on 11.02.2016)* read as:

“3. Brig. N.Deka, learned Counsel appearing for the respondents has raised a preliminary objection relating to the maintainability of the O.A., contending inter alia that since the applicant has prayed for a relief based on

the proceeding dated 5.8.2014 conducted by the CO awarding punishment in a summary disposal and trial, this Tribunal has no jurisdiction to entertain the OA in view of the definition of 'service matters' in Section 3(o) of the Armed Forces Tribunal Act, 2007. Learned Counsel, therefore, submits that the OA may be dismissed as this Tribunal has no jurisdiction to entertain the same.

4. Dr. Lal, learned Counsel submits that since the definition of 'service matter' in Section 3(o) also includes 'any other matter, whatsoever', as stated in Clause (iv) and this Tribunal's jurisdiction has not been ousted by either (i), (ii), (iii) or (iv) of Section 3(o)(iv), this Tribunal has the jurisdiction to entertain the O.A.

5. As noticed above, the applicant in this O.A. has challenged the order dated 22th September, 2014 refusing to grant further extension in service as well as his discharge from service on completion of normal service limit, due to award of red ink entry punishment on 5th August, 2014 under Section 41 (1) of the Army Act, 1950. The CO awarded the punishment on 5.8.2014 in a summary trial, based on which the impugned order has been passed. Unless the order dated 5.8.2014 is interfered with by the appropriate Court of law, the applicant cannot get any relief.

6. Section 14 of the Armed Forces Tribunal Act, 2007 confers jurisdiction on this Tribunal in relation to all service matters.

7. The term 'service matter' is defined in Section 3(o) of the said Act. For better appreciation, Section 3(o) of The Armed Forces Tribunal Act, 2007, is quoted in its entirety:

xxx xxx xxx xxx

8. Clause (iii) of Section 3(o) of the Armed Forces Tribunal Act, 2007, provides that the 'service matter'

includes the summary disposal and trial where the punishment of dismissal is awarded. In the instant case vide order dated 5.8.2014 the punishment of dismissal has not been awarded. The contention of the learned Counsel for the applicant that in view of the provision contained in Section 3(o)(iv), which empowers this Tribunal to entertain an OA in respect of 'any other matter, whatsoever', excluding the matters specifically mentioned in sub-clauses (i), (ii), (iii) and (iv) thereof, this OA is maintainable, cannot be accepted for the simple reason that the term 'any other matter, whatsoever', is to be read with reference to the 'service matter', as defined in Section 3(o). The Tribunal cannot give an interpretation that 'any other matter, whatsoever', includes all the matters concerning the service despite there being a specific provision that 'service matter', apart from others, includes only those summary disposal and trial where the punishment of dismissal is awarded. If a contrary interpretation is given, it would amount to extending the jurisdiction of the Tribunal beyond the 'service matter' as defined in Section 3(o) of the aforesaid Act and hence such interpretation cannot be given.

5. Learned counsel for the respondent submits that matter has been considered by Allahabad High Court in ***Major Kunwar Ambreshwar Singh Vs. Union of India 2015 (3) SLR 595***, Uttarakhand High Court in ***Ex Havildar Birendra Singh Negi Vs. Union of India & others 2012 (18) S.C.T 846*** and ***Lalit Kumar Vs. Union of India and another (Writ Petition No. 756 (PIL) of 2008. D/d. 14.12.2010)***. Allahabad High Court as well as Uttarakhand High Court has clearly held that Tribunal has jurisdiction to entertain petition against punishment of less than dismissal awarded in summary trial.

6. I have heard the arguments of both sides and with the able assistance of learned counsels perused the record.

7. From the perusal of record and arguments of both sides, it comes out that as per petitioners if higher punishment i.e. dismissal is awarded in summary trial, Tribunal is having jurisdiction whereas Tribunal has no jurisdiction if lesser punishment is awarded. Thus, in all those cases where punishment awarded is minor, the remedy available is writ jurisdiction.

As per respondents, the jurisdiction of Tribunal is very vast and Tribunal can entertain petitions even in those cases where minor punishment has been awarded in summary disposal and trials.

8. The Parliament enacted Armed Forces Tribunal Act keeping in view a large number of cases relating to service matters of the Members of Armed Forces, pending in the Courts for long time. Hon'ble Supreme Court also expressed its opinion for constitution of Armed Forces Tribunal which was considered by the Parliament and consequently, the Act has been enacted. Statement of objects and reasons of the Act is reproduced as under:

“The existing system of administration of justice in the Army and Air Force provides for submission of statutory complaints against grievances relating to service matters and pre and post confirmation petitions to various authorities against the findings and sentences of Court-martial. In Navy, an aggrieved person has a right to submit a complaint relating to service matters and has a right of audience before the Judge Advocate General in the Navy in regard to the finding and sentence of a

Court-martial before the same are finally put up to the Chief of the Naval Staff.

2. Having regard to the fact that a large number of cases relating to service matters of the members of the abovementioned three armed forces of Union have been pending in the Courts for a long time, the question of constituting an independent adjudicatory forum for the Defence Personnel has been engaging the attention of the Central Government for quite some time. In 1982, the Supreme Court in Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others, held that the absence of even one appeal with power to review evidence, legal formulation, conclusion and adequacy or otherwise of punishment in the laws relating to the armed forces was a distressing and glaring lacuna and urged the Government to take steps to provide for at least one judicial review in service matters. The Estimates Committee of the Parliament in their 19th Report presented to the Lok Sabha on 20th August, 1992 had desired that the Government should constitute an independent statutory Board or Tribunal for service personnel.

3. In view of the above, it is proposed to enact a new legislation by constituting an Armed Forces Tribunal for adjudication of complaints and disputes regarding service matters and appeals arising out of the verdicts of the Courts-martial of the members of the three service (Army, Navy and Air Force) to provide for quicker and less expensive justice to the members of the said Armed Forces of the Union.

4. Establishment of an independent Armed Forces Tribunal will fortify the trust and confidence amongst members of the three services in the system of

dispensation of justice in relation to their service matters.

5. The Bill seeks to provide for a judicial appeal on points of law and facts against the verdicts of Courts-martial which is a crying need of the day and lack of it has often been adversely commented upon by the Supreme Court. The Tribunal will oust the jurisdiction of all Courts except the Supreme Court whereby resources of the Armed Forces in terms of manpower, material and time will be conserved besides resulting in expeditious disposal of the cases and reduction in the number of cases pending before various Courts. Ultimately, it will result in speedy and less expensive dispensation of justice to the Members of the abovementioned three Armed Forces of the Union.

6. The Notes on clauses explain in detail the various provisions contained in the Bill.

7. The Bill seeks to achieve the above objectives.”

9. From the reading of above quoted objects and reasons, it comes out that the intention of the legislature is to provide an alternative forum which may decide all service matters of Army personnel efficaciously so that their service career may not be affected adversely.

10. The Tribunal is exercising power with respect to service disputes of members of three armed forces, thus, outcome of this petition is going to affect members of all the armed forces, nevertheless, with the consent of both sides provisions of Army Act are considered herein.

11. It is inevitable to look at relevant provisions of the 2007 Act as well as Army Act for the appreciation of the controversy and disposal of present petitions, thus, relevant sections are reproduced as below:

AFT Act, 2007

“(o) “service matters”, in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), mean all matters relating to the conditions of their service and shall include—

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions;

(iii) summary disposal and trials where the punishment of dismissal is awarded;

(iv) any other matter, whatsoever, but shall not include service matters relating to—

(i) orders issued under section 18 of the Army Act, 1950 (46 of 1950), sub-section (1) of section 15 of the Navy Act, 1957 (62 of 1957) and section 18 of the Air Force Act, 1950 (45 of 1950); and

(ii) transfers and postings including the change of place or unit on posting whether individually or as a part of unit, formation or ship in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950);

(iii) leave of any kind;

(iv) summary court martial except where the punishment is of dismissal or imprisonment for more than three months;

p) “summary disposals and trials” means summary disposals and trials held under the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air

Force Act, 1950 (45 of 1950);

14. Jurisdiction, powers and authority in service matters.-(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 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.

(2) Subject to the other provisions of this Act, a person aggrieved by an order pertaining to any service matter may make an application to the Tribunal in such form and accompanied by such documents or other evidence and on payment of such fee as may be prescribed.

(3) to (7) xxxx xxxx xxxx

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) to (5) xxxx xxxx xxxx

Army Act, 1950

79. Punishments otherwise than by court- martial. Punishments may also be inflicted in respect of offences committed by persons subject to this Act without the intervention of a court- martial and in the manner stated in sections 80, 83, 84 and 85.

80. Punishment of persons other than officers,

junior commissioned officers and warrant officers.

Subject to the provisions of section 81, a commanding officer or such other officer as is, with the consent of the Central Government, specified by the Chief of the Army Staff, may, in the prescribed manner, proceed against a person subject to this Act otherwise than as an officer, junior commissioned officer or warrant officer who is charged with an offence under this Act and award such person, to the extent prescribed, one or more of the following punishments, that is to say,-

- (a) imprisonment in military custody up to twenty- eight days;
- (b) detention up to twenty- eight days;
- (c) confinement to the lines up to twenty- eight days;
- (d) extra guards or duties;
- (e) deprivation of a, position of the nature of an appointment or of corps or working pay, and in the case of noncommissioned officers, also deprivation of acting rank or reduction to a lower grade of pay;
- (f) forfeiture of good service and good conduct pay
- (g) severe reprimand or reprimand
- (h) fine up to fourteen days' pay in any one month;
- (i) penal deductions under clause (g) of section 91;

108. Kinds of courts- martial-For the purposes of this Act there shall be four kinds of courts- martial, that is to say,-

- (a) general courts- martial;
- (b) district courts- martial;
- (c) summary general courts- martial; and
- (d) summary courts- martial.

116. Summary court- martial.

(1) A summary court- martial may be held by the commanding officer of any corps, department or detachment of the regular Army, and he shall alone constitute the court.

(2) The proceedings shall be attended throughout by two other persons who shall be officers or junior commissioned officers or one of either, and who shall not as such, be sworn or affirmed.

120. Powers of summary courts- martial. (1) Subject to the provisions of sub- section (2), a summary court- martial may try any offence punishable under this Act.

(2) When there is no grave reason for immediate action and reference can without detriment to discipline be made to the officer empowered to convene a district court- martial or on active service a summary general court- martial for the trial of the alleged offender, an officer holding a summary court- martial shall not try without such reference any offence punishable under any of the sections 34, 37 and 69, or any offence against the officer holding the court.

(3) A summary court- martial may try any person subject to this Act and under the command of the officer holding the court, except an officer, junior commissioned officer or warrant officer.

(4) A summary court- martial may pass any sentence which may be passed under this Act, except a sentence of death or transportation, or of imprisonment for a term exceeding the limit specified in subsection (5).

(5) The limit referred to in sub- section (4) shall be one year if the officer holding the summary court-martial is of the rank of lieutenant-colonel and upwards, and three months if such officer is below that rank.”

12. From the perusal of above quoted sections, it comes out that

Section 14 of the 2007 Act, confers power upon Tribunal to entertain 'service matters'. The expression 'service matters' has been defined under Section 3 (o) of the 2007 Act. Section 3 (o) of the 2007 Act is couched in three parts. The first part of the section takes in its sweep “all matters relating to conditions of service”. The second part is inclusion part and it provides that matters enumerated in Clauses (i) to (iv) shall be included in the definition of 'service matters'. The third part is exclusion part. It excludes different matters from the purview of 'service matters'.

Section 14 of the 2007 Act confers original jurisdiction whereas Section 15 confers Appellate jurisdiction upon the Tribunal. Under Section 15 of the Act, an appeal lies against every order passed by court martial.

Expression ‘court martial’ has been defined by Section 108 of Army Act. ‘Summary court martial’ is one kind of courts martial, thus, every order passed by summary court martial is an appealable order.

There are four kinds of courts martial namely General courts- martial, District courts-martial, Summary general courts- martial and Summary courts-martial. Courts martial after following procedure prescribed under Army Act have power to impose punishment. Apart from Courts martial, there are provisions which empower President, Central Government and Officers of Army to award punishment including dismissal from service. Sections 79-84 of Army Act provide for punishment otherwise than by court martial. Authorities under Section 79-84 have power to impose minor penalty and there is no power to dismiss from service. Under Section 18-24 of Army Act, President,

Central Government and officers of Army have power to dismiss or remove from service. The marginal note of Section 19 of Army Act has used expression 'termination of service' and in the body of section, expression 'dismissal and removal from service' has been used. Similarly, as per Rule 14 (4) of the Army Rules, 1954 expression termination includes dismissal and removal from service. It means understanding of legislature with respect to expression 'termination', 'dismissal' and 'removal' is that termination includes dismissal as well removal. Clause (ii) of Section 3 (o) of 2007 Act includes 'termination', thus, all orders of 'termination' passed by authorities other than court martial are amenable to original jurisdiction of the Tribunal under Section 14 of the 2007 Act. Section 19 of the Army Act and Rule 14 (4) of Rules read as:

Section 19: Termination of service by Central Government.-

Subject to the provisions of this Act and the rules and regulations made thereunder the Central Government may dismiss, or remove from the service, any person subject to this Act.

Rule 14: Termination of service by the Central Government on account of misconduct.-

(4) When submitting a case to the Central Government under the provisions of sub-rule (2) or sub-rule (3), the Chief of the Army Staff shall make his recommendation whether the officer's service should be terminated, and if so, whether the officer should be-

- (a) dismissed from the service; or
- (b) removed from the service; or

(c) Compulsorily retired from the service.

13. Learned counsel for the petitioner is heavily relying upon Clause (iii) of inclusive part of Section 3 (o) to contend that where punishment is less than dismissal in summary trial, the Tribunal would have no jurisdiction, however, the petitioner has ignored Clause (iv) of inclusion part of Section 3 (o) of the Act and opening expression of the Section which provide that all matters relating to conditions of service would be covered within the definition of service matters. It is settled principle of interpretation that Court cannot read one section or subsection in isolation. All the provisions of an Act need to be read in conjunction and consonance with each other. Courts are supposed to take care of intention of the legislature and scheme of the Act though it is settled law that plain meaning, if language is unambiguous, ought to be preferred. An interpretation which makes any provision otiose or defeats object of the statute should be avoided. Interpretation should be made in such a manner that object of the statute is achieved.

In the case in hand, it would be unfair if opening expression and clause (iv) of Section 3(o) are ignored while interpreting clause (iii). All the clauses need to be read in conjunction with each other. On the basis of plain reading of clause (iii), if matters which are not covered by exclusion clauses, are excluded from the scope of 'service matters' it would amount to expanding scope of exclusion clause which cannot be permissible. It would be further contrary to intent and purport of the enactment as well principles of interpretation.

14. From the conjoint reading of expression "means all matters

relating to conditions of their service” and “any other matter, whatsoever”, it is quite evident that jurisdiction of Tribunal is very vast. The Tribunal has jurisdiction to entertain all cases except those which are specifically excluded from the jurisdiction of the Tribunal. In the exclusion Clause, there are four categories of matters which are excluded from the definition of 'service matters'. The legislature has specifically excluded few conditions of service from the purview of 'service matters'. The legislature has excluded few conditions of service from the definition of 'service matters' and exclusion of any other condition of service would amount to re-writing of Section 3 (o) which is not permissible. The object of the 2007 Act is to provide expeditious, alternative and efficacious remedy to the members of the armed forces. This Court while dealing with service matters of different organizations has noticed that most of the cases are of punishment less than dismissal. As per interpretation of petitioner, an employee who is subjected to minimum punishment should approach High Court instead of Tribunal. The interpretation of petitioner not only runs contrary to objects & reasons of 2007 Act but also plain reading of Section 3(o) of the Act. Clause (iv) is a residuary Clause. Expression 'whatsoever' has been used in the said clause. The expression 'whatsoever' cannot be ignored. Expression 'whatsoever' carries wide connotation.

15. A Division Bench of Allahabad High Court in ***Major Kunwar Ambreshwar Singh*** (supra) has adverted with similar question and held that Clause (iv) of inclusion part of Section 3(o) cannot be ignored. If the effect of the said clause is not taken into account, it would

make clause (iv) redundant which is not permissible under interpretative jurisprudence. The relevant extracts of the judgment read as:

“22. In view of above, while interpreting the provisions contained in Section 3(o) of the Act, the provisions contained in Clause (iv) containing the words, "any other matter, whatsoever," cannot be excluded. In case these words are not taken into account, it shall make Clause (iv) redundant which is not permissible under Interpretative jurisprudence.

25. The punishment of "severe reprimand" affect the service career of the army personnel. Even under dictionary meaning, the punishment of "severe reprimand" shall be service matter and be amenable before Armed Forces Tribunal constituted under the Act. In view of above, keeping in view statutory mandate as well as the provisions contained in Section 84 of the Army Act, 1950, the punishment of "severe reprimand" shall be deemed to be a punishment and fall under the category of "service matter" as defined by Section 3 of the Act and can be impugned before the Armed Forces Tribunal in pursuance to the provisions contained in the Act.

With great respect, we are not in agreement with the interpretation given by the Armed Forces Tribunal, Principal Bench, Delhi for the reasons assigned hereinabove. Let the records be remitted back to the Regional Bench of Armed Forces Tribunal, Lucknow within two weeks from today to decide the petition on merit, expeditiously, say within a period of three months from the date of production of a certified copy of the present order/judgment.”

16. There is another aspect of the issue involved. As per Clause (iv) of exclusion part of Section 3 (o), 'service matters' shall not include

summary court martial except where the punishment is of dismissal or imprisonment for more than 3 months. Section 15 of the 2007 Act provides for appeal against any order, decision, finding or sentence passed by a court martial or any matter connected therewith or incidental thereto. Section 108 of Army Act specifies kinds of courts martial. Summary courts martial is one of courts martial which means every order, decision, finding or sentence passed by summary court martial is subject to challenge by way of appeal before Tribunal. As per Section 14 of 2007 Act, Tribunal has original jurisdiction whereas by Section 15, Tribunal is vested with Appellate jurisdiction. On account of exclusion of an order passed by summary court martial from the definition of 'service matters', an aggrieved person cannot invoke original jurisdiction of Tribunal under Section 14, however, he can invoke Appellate jurisdiction of the Tribunal. In the aforesaid Clause (iv) expression 'except' has been used.

If the contention of the petitioner is applied to clause (iv) of exclusion part, where the punishment of dismissal or imprisonment for more than 3 months is awarded by summary court martial, the Tribunal shall have original jurisdiction under Section 14 whereas in all other cases, the Tribunal shall exercise Appellate jurisdiction.

Section 15 provides for appeal against any order, decision, finding or sentence passed by a court martial or any matter connected therewith or incidental thereto. The Appellate jurisdiction of Tribunal is very vast. Every order of summary court martial is subject to appeal, therefore, order of dismissal or imprisonment for more than 3 months is

also appealable. There seems no reason to include order of punishment of dismissal or imprisonment for more than 3 months in the definition of 'service matters' and exclude all other orders passed by summary court martial from the definition of 'service matters'. All the orders of summary court martial are appealable, thus, in view of plain language of Section 15 of the 2007 Act, all orders passed by summary court martial stand excluded from the purview of Section 3 (o) read with section 14 of 2007 Act.

A Division Bench of Uttarakhand High Court in *Lalit Kumar* (supra) has adverted with Clause (iv) of exclusion part of Section 3 (o) of the Act. The Court has adverted with expression 'except' used in aforesaid clause vis-a-vis Section 15 of the Act. The Court has concluded that in order to make the Act in consonance with the understanding of Union of India as well as legislature, word 'except' is superfluous and the same should be removed. The Court has further opined that after removal of word 'except' from Clause (iv), orders of summary court martial where the punishment is of less than 3 months would come within the meaning of 'service matters' by reason of plain English used in the Statute. The relevant extracts of the judgment read as:

“In the event the word 'except' as underlined by us remains, summary court martial where the punishment is of dismissal or imprisonment for more than three months, will become service matters to be dealt with by the Tribunal in exercise of jurisdiction vested in it to deal with service matters. But if the said word 'except' is removed then summary court martial where the punishment is of dismissal or imprisonment for more than three months will be excluded from service matters

and accordingly shall be dealt with in exercise of appellate power granted by Section 15 of the Act. The Union of India is of the view that summary court martial where the punishment is of dismissal or imprisonment for more than three months, should be outside of the purview of service matters. It is also of the view that imprisonment for less than three months is outside the purview of the Tribunal. The way words have been couched, while giving definition of service matters, it does not appear that legislature understood the requirement of Union of India that imprisonment for less than three months should be outside the purview of the Tribunal. The manner in which the words have been couched in the Statute, if underlined word 'except' is retained then where the punishment is of dismissal or imprisonment for more than three months, the same will form part of service matters and shall be dealt with in accordance with jurisdiction vested in the Tribunal by Section 14 of the Act; where as summary court martial where the punishment is less than three months shall be dealt with by the Tribunal in exercise of its appellate power under Section 15 of the Act, and in case, the word 'except' is removed summary court martial where the punishment is of dismissal or imprisonment for more than three months shall be dealt with by the Tribunal in exercise of its appellate jurisdiction vested by Section 15 of the Act. We, therefore, feel that in order to make the Act in consonance with the understanding of Union of India as well as the legislature the underlined word 'except' is superfluous and the same should be removed. We, accordingly, do the same. Even after removal of the underlined word 'except' summary court martial where the punishment is of less than three months, the same would come within the meaning of service matters by reason of plain English used in the

Statute. It shall be open to the appropriate authority to take appropriate steps in that regard.”

[Emphasis Supplied]

The UOI filed SLP (Civil) No. 33898 of 2001 before Supreme Court against aforesaid judgment which vide order dated 15.12.2015 stands dismissed alongwith Criminal Appeal No. 948 of 2010.

In view of aforesaid judgment, all orders passed by summary court martial where punishment is other than dismissal or less than 3 months imprisonment would be amenable to Tribunal. Uttrakhand High Court has ordered to remove word ‘except’ from clause (iv) in view of intention and purport of the Act. Similarly, clause (iv) of inclusion part needs to be construed to include punishment other than punishment of dismissal.

17. In the wake of above-stated facts and findings, judgments of Allahabad and Uttrakhand High Court, this Court is of the considered opinion that petition against the impugned order is maintainable before Armed Force Tribunal.

18. All the petitions are disposed of with a direction to the Registry to transfer complete paper books of all the cases to AFT, Chandigarh.

(JAGMOHAN BANSAL)
JUDGE

03.10.2023
Ali

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>