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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

Reserved on 24.09.2024  
Pronounced on: 14.10.2024

109 CRWP-5170-2024 (O & M)  
MAJOR BIKRAM SINGH ...PETITIONER

VERSUS

UNION OF INDIA AND OTHERS ...RESPONDENTS

110 CRWP-9049-2024 (O & M)  
JC 681427Y SUBEDAR MAJOR (RETD.)  
J. BUDH RAM ...PETITIONER

VERSUS

UNION OF INDIA AND OTHERS ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR  
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr.Sanjeev Sharma, Senior Advocate with  
Col. N.K. Kohli (Retd.), Advocate for the petitioner in  
CRWP-5170-2024.

Mr. Gurpreet Singh, Advocate for the petitioner in  
CRWP-9049-2024.

Mr. Rohit Verma, Senior Panel Counsel for respondents-UOI in  
CRWP-5170-2024.

Ms. Bhavna Datta, Senior Panel Counsel  
for the respondents-UOI in CRWP-9049-2024.

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**SUDEEPTI SHARMA, J.**

1. Since O.A. No.926 of 2024 dated 22.08.2024 titled as **J Budh Ram versus Union of India and others** was decided in view of O.A. No.755 of 2023 dated 16.05.2024 titled as **Maj Bikram Singh versus Union of India and others** and since common question of law is involved in both the petitions, therefore, we shall decide both the petitions vide common judgment.

2. The challenge in the present petitions is to the order dated 16.05.2024 passed by the learned Armed Forces Tribunal, Regional Bench, Chandigarh at Chandimandir in OA No.755 of 2023 and order dated 22.08.2024 passed by learned Armed Forces Tribunal, Regional Bench, Chandigarh at Chandimandir in OA No.926 of 2024 whereby appeals against impugned orders challenged by the petitioners, were dismissed on the ground of maintainability.

**BRIEF FACTS ARE TAKEN FROM CRWP-5170-2024**

3. Brief facts of the case are that the petitioner is an officer of the Military Engineering Service (MES). He was posted as Assistant Garrison Engineer (Electrical & Mechanical) [AGE (E&M)] in the office of Garrison Engineer (Electrical & Mechanical) [GE (E&M)], Secunderabad from 15.05.2012 to 05.01.2015. A construction Company, namely M/s Srinivasa Constructions submitted a complaint dated 09.12.2015 to Senior Army Officers regarding irregularities in contracts during 2012 to 2015. The Army initiated Court of Inquiry but the same could not be concluded as the Central Bureau of Investigation took over the investigation and registered a case on 05.01.2016. Investigation was completed in September 2017 and permission

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for prosecuting the accused persons was sought from the Government of India vide CBI letter dated 20.09.2017. A copy of the said letter was addressed to the General Officer Commanding, Head Quarters, Telangana and Andhra Sub Area [GOC (TASA)] also. The Govt. of India denied sanction for prosecuting the petitioner. The department, however, thought it fit to initiate departmental proceedings against the petitioner and GOC (TASA) issued directions dated 07.08.2019 for initiation of proceedings against the petitioner. Attachment order dated 26.09.2019 was issued and the petitioner was directed to move to HQ AOC Centre, Secunderabad where he reported on 12.12.2019. Hearing of charge was conducted and summary of evidence was ordered to be recorded, where after, a convening order dated 17.01.2023 was issued convening a General Court Martial (GCM) for trial of the petitioner. The General Court Martial physically assembled on 28.01.2023 and the trial commenced.

4. During the course of trial, the petitioner raised Special Plea to Jurisdiction under Rule 51 of the Army Rules, 1954 (hereinafter referred to as 'the Rules') alleging lack of jurisdiction in the GCM. The said plea was rejected vide order dated 06.04.2023. Plea in Bar was raised under Rule 53(c) of the Rules and the same was rejected vide order dated 18.04.2023. *Inter alia* the said orders were challenged before the Armed Forces Tribunal, Regional Bench, Chandigarh at Chandimandir in O.A. No.755-2023.

### **SUBMISSIONS OF THE COUNSEL FOR THE PARTIES**

5. Learned counsel for the petitioner contended that the Armed Forces Tribunal has wrongly dismissed the appeal of the petitioner. They further contended that the learned Tribunal did not interpret Section 15 of



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the Armed Forces Tribunal Act, 2007 in right perspective. Therefore, the order dated 16.05.2024 passed by the learned Armed Forces Tribunal, Regional Bench, Chandigarh at Chandimandir, deserves to be set aside.

6. Per contra learned counsel for the respondents-UOI contended that there is no infirmity in the order/judgment passed by the Armed Forces Tribunal. Therefore, the petition deserves to be dismissed.

7. We have heard learned counsel for the parties and perused the whole record of the case.

8. Learned Armed Forces Tribunal after hearing both the parties dismissed the appeal of the petitioner as not maintainable. Relevant portion of the order is reproduced hereunder:-

*“Learned counsel for the non-applicant has submitted that Section 15(1) of the Act is very widely worded and should not be construed narrowly. Narrow construction placed in **Hav Sham Das D** (supra) is erroneous. Power granted to this Tribunal to obtain reports from Court Martial and direct reference of questions for inquiry under Section 17 of the Act would be rendered redundant if Section 15 of the Act is given a narrow construction. The power to grant an interim order under Section 26 of the Act would also be rendered illusory. The judgment in **P.S.Gill** (supra) is squarely applicable and the judgment in **Hav Sham Das D** (supra) does not lay down the correct law. Reliance has also been placed on order dated 19.10.2010 passed by a Full Bench of the Armed Forces Tribunal, Principal Bench, New Delhi in **O.A. No.471 of 2010***



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*Ex-Hav Parmeshwar Ram v. Union of India and others*, order dated 25.05.2022 passed by this Bench in **OA No.462 of 2022** **Lt. Col P Vasudeva v. Union of India and Others**, order dated 04.02.2022 passed by this Bench in **OA No.1294 of 2021 Brig Suresh Gupta v. Union of India and others** and order dated 16.09.2022 passed by the Armed Forces Tribunal, Principal Bench, New Delhi in **OA No.1699 of 2022 Ex Sub Kulwant Singh v. Union of India and others**. Reference has also been made to judgment dated 19.03.2013 passed by a Division Bench of the Delhi High Court in **WP(C) No.1755 of 2013 Maj Saurabh Saharan v. Union of India and ors.**

*In Hav Sham Dass D (supra)* the Principal Bench has interpreted Section 15 of the Act. The judgment of the Delhi High Court in **Maj Saurabh Saharan (supra)** has been taken note of and has been distinguished. Appeal against the said judgment has been dismissed by the Hon'ble Supreme Court, although by passing a non-speaking order. Thus, as on date, the judgment in **Hav Sham Dass D (supra)** holds the fort.

The issue regarding maintainability of an Original Application against interim order passed by a Court Martial has been examined by us also in OA No.862 of 2023 **Col Jagpreet Singh Bakshi and another v. Union of India and another**, decided on 13.12.2023. After careful consideration of the matter we have followed **Hav Sham Das D (supra)** and have held that the Original Application is not maintainable.



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*During the course of arguments we were told that the order dated 13.12.2023 in **Col Jagpreet Singh Bakshi and another** (supra) is under challenge before the High Court and that a stay has been granted. Thus the said order be not taken into consideration. The submission, however, has no merit as we have obtained the orders passed by the Hon'ble Punjab and Haryana High Court in CRWP-275-2024 **Colonel Jagpreet Singh Bakshi and anol Union of India and others** and a perusal of order dated 15.01.2024 whereby notice was issued by the Division Bench shows that no argument has been raised against the issue of maintainability. The said order is reproduced below :-*

*"Inter alia submits that on 28.09.2019 the Court of Inquiry was completed and the petitioners were held responsible for financial Irregularities and procedural lapses for the works executed in the financial year 2018-2019 while referring to page no.42. It is, accordingly submitted that on 29.10.2019 (page No.260) [Annexure A-12], the observations have come that the matter was laced before the competent authority and the following observations were noticed regarding the papers not being complete. Resultantly, on 03.12.2019 (Annexure A-13) finalized Court of Inquiry after duly rectifying the observations given in the earlier letter dated 28.09.2019 was done. It is, thus, submitted that the period of*



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*limitation provided under Section 122 of the Army Act, 1950 is prescribed for three years which is to be seen from the date of offence or on the first day on which such offence comes to the knowledge of such person or authority. It is, accordingly, the case of the counsel for the petitioners that the Court Martial was only assembled on 14.01.2023 while referring to page No.110 (Annexure A-2) and, therefore, proceedings would be barred by limitation.*

*It is, thus, the contention of the counsel for the petitioners that the stand of the respondents (page No.145) that 24.02.2020 would be the date of knowledge is accordingly contested wherein the General Officer Commanding had examined the issue. It is, accordingly, contended that vide impugned order dated 13.12.2023 (page No.325) the Tribunal has firstly dismissed the OA on the ground of non-maintainability under Section 15 of the Armed Forces Tribunal Act, 2007 that the same was against an order dated 13.05.2023 wherein the objections, as such, of the petitioners had been rejected by the General Court Martial (page No.256) onwards) on the reasoning that confirmation has not been done.*

*It is further the contention of the counsel that having dismissed the appeal on the issue of maintainability the Tribunal should not have gone into*



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*the aspect of the plea of limitation to decide it against the petitioners, which thus caused serious prejudice while opining on the issue of limitation which would then bind the petitioners in the future.*

*Notice of motion.*

*Mr. Verma accepts notice on behalf of the respondents.*

*Adjourned to 18.03.2024.*

*Keeping in view the above, let the respondents examine the witnesses in question and thereafter halt the proceedings, till further orders."*

*In **P.S.Gill** (supra) the respondent before the Hon'ble Supreme Court was being subjected to a General Court Martial after his Commanding Officer as well as the next senior authority had found that the Summary of Evidence did not show that any offence has been committed by him. Despite these findings, the next senior authority ordered the respondent to be tried by a GCM. The convening order was dated 23.02.2010 and the same was challenged before the Armed Forces Tribunal (hereinafter referred to as "the Tribunal"). The same was allowed and order dated 23.02.2010 was quashed after finding that the evidence on record did not show that the applicant had committed any offence. The findings of the Tribunal were challenged before the Hon'ble Supreme Court and an objection as raised on behalf of the Union of India that an Original*



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*application against an order passed at the interlocutory stage was not maintainable. This objection was rejected by holding that Section 14 of the Act confers jurisdiction to challenge an order passed in a 'service matter'. An order convening a Court Martial could result in dismissal from service and was accordingly a 'service matter'. Accordingly, the OA was held to be maintainable. Section 15 of the Act pertaining to appeal was not interpreted and, therefore, said judgment is not an authority on the point in issue.*

*The judgment in **Ex-Hav. Parmeshwar Ram** (supra) is not applicable as the question decided in the said case was regarding jurisdiction of the Tribunal to entertain an original Application during the pendency of a post-confirmation petition filed under Section 164 (2) of the Army Act, 1950 (hereinafter referred to as 'the Amy Act'). The judgment in **Lt Col P Vasudeva** (supra) is also not applicable as the issue of maintainability of Original Application was neither raised nor decided. In **Brig Suresh Gupta** (supra), **Hav Sham Das D** (supra) has been agreed with and thus we fail to understand the reason for citing the said judgment. It does not help the case of the non-applicant. **Ex Sub Kulwant Singh** (supra) is also not relevant because the Tribunal chose not to interfere with an order rejecting the Plea in Bar passed by the GCM, though for different reasons. Judgment in **Hav Sham Das D** (supra) was neither referred to nor considered.*



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*In view of the fact that this Bench has already decided that an appeal against an interim order passed by a Court Martial is not maintainable, we do not deem it necessary to consider the argument raised by the learned counsel for the non-applicant on interpretation of Section 15 of the Act. We are bound by the view taken by us and as at present advised, the said view is not under challenge before the High Court. At least, no argument challenging the correctness of the decision regarding maintainability has been raised at the time motion hearing.*

*Thus, we hold that the appeal against the orders dated 06.04.2023 and 18.04.2023 is not maintainable. Primarily the said orders are under challenge and learned counsel for the non-applicant has not submitted otherwise. Accordingly, the application is allowed and interim order dated 10.05.2023 is vacated.”*

9. Learned Tribunal has dismissed the O.A. No.755 of 2023 dated 16.05.2024 titled as **Maj Bikram Singh versus Union of India and others** filed by the petitioners by relying upon OA No.176 of 2015 dated 07.04.2015 titled as **Hav Sham Das D versus UOI and others** by stating that the appeal against the said judgment was dismissed by the Hon’ble Supreme Court in the case titled as **Hav Sham Das D versus UOI and others** on 03.07.2015, although by passing a non-speaking order. Therefore, by holding that as on date the judgment passed in **Hav Sham Das D** (supra)



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holds good and the learned Tribunal dismissed the OA filed by the petitioners.

10. The question involved in the present petition is with regard to the interpretation of Section 15 of the Armed Forces Tribunal Act, 2007. For proper adjudication, Section 15 of the Armed Forces Tribunal Act, 2007 is reproduced hereunder:-

***“S.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.*



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*(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*



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*(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 (2 of 1974)."*

11. A bare reading of Section 15 of the Act shows that the Tribunal shall exercise all the jurisdiction, powers and authority exercisable under the Act (2007) in relation to appeal against any order, decision, finding or



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sentence passed by a court martial or any matter connected therewith or incidental thereto. It further states that any person aggrieved by an order, decision, finding or sentence passed by the court martial may prefer an appeal. Therefore, the appeal against the order dated 06.04.2023 and 18.04.2023 is maintainable.

12. Learned Tribunal by relying upon the order passed in OA No.176 of 2015 titled as **Hav Sham Das D versus UOI and others** by Armed Forces Tribunal, Principal Bench, New Delhi, Coram of 2, dated 07.04.2015, dismissed the appeal filed by the petitioners whereas totally ignored the order passed in OA No.471 of 2010 titled as **Ex-Hav. Parmeshwar Ram versus Union of India and others**, by Armed Forces Tribunal, Principal Bench, New Delhi, Coram of 3, which has directly dealt with the scope of Section 15 of the Armed Forces Tribunal Act, 2007. The relevant extract of **Ex-Hav. Parmeshwar Ram versus Union of India and others** is reproduced hereunder:-

*“1. In this reference, three questions have been referred for the larger bench of the Tribunal for answer which reads as under:*

- 1. What is the scope of the Section 15 of the Armed Forces Tribunal Act, 2007?*
- 2. Whether the powers of the Tribunal under Section 15 of the Act are dependent on the statutory representation under section 164(2) of the Army Act?*
- 3. Whether the decision on the statutory representation by the competent authority would play a bar on the*



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*statutory powers conferred on the Tribunal under section  
15 of the Act?*

2. to 8.        xxx    xxxx    xxxx

9.        *Though the expression of appeal has not been defined,  
however, Section - 15 lays down the jurisdiction, powers and  
authority in matters of appeal against the court-martial. The  
Section 15 of the Act reads as under:-*

*15. (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 courtmartial or any matter connected  
therewith or incidental thereto.*

*(2) Any person aggrieved by an order, decision, finding or  
sentence passed by a courtmartial 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-*



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*(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 or the Navy Act, 1957 or the Air Force Act, 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;*



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*(iii) commute such punishment to any lesser punishment or punishments mentioned in the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 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 section 175, 178, 179, 180, 193, 195, 196 or 228 of the Indian Penal Code and Chapter XXVI of the Code of Criminal Procedure, 1973,(2 of 1974)."*

*This pertains to appellate jurisdiction of Tribunal.*

*10. Section 15 empowers the Tribunal, to entertain the appeal / application from aggrieved person against the order passed by the Court Martial or any matter connected therewith or incidental thereto. That means 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. Prescribed means prescribed under the rules. The particular procedure has been prescribed under the rules for presenting the appeal.*



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11. Therefore, Tribunal has original power u/s 14 & appellate power u/s 15. In the present case we are concerned with appellate power. The Tribunal u/s 15 has full power to grant bail to any person accused of any offence in military custody, with or without any condition, it considers necessary. The Tribunal is empowered to allow the appeal and set aside the conviction, if it is not sustainable due to any reason whatsoever or finding involves a wrong decision on the question of law or there was a material irregularity in the course of trial resulting in denial of justice. It has also power to dismiss the appeal where Tribunal considers that no miscarriage of justice is likely to be caused to the appellant. Apart from this, Tribunal has been given power to 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 or the Navy Act, 1957 or the Air Force Act, 1950, as the case may be; 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, the Navy Act, 1957 and the Air Force Act, 1950, as the case may be; iv) enhance the sentence



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*awarded by a court-martial with an opportunity to the accused (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. It further says that the Tribunal shall be deemed to be a criminal court for the purposes of section 175, 178, 179, 180, 193, 195, 196 or 228 of the Indian Penal Code and Chapter*

*XXVI of the Code of Criminal Procedure, 1973.*

*12. Section 16 lays down that, in case a conviction of a person by court martial for an offence has been set aside or quashed, he shall not be liable to be tried again for that offence by a court-martial or by any other Court.*

*13. Sub-Section 2 of the Section 16 further lays down that the Tribunal after quashing a conviction, can make an order authorising the appellant to be retried by court-martial, but shall only exercise this power when the appeal against conviction is allowed by reasons only of evidence received or available to be received by the Tribunal under this Act and it appears to the Tribunal that the interests of justice require that an order under this section should be made. A proviso has been added that appellant shall not be retried under this section for an offence (a) the offence for which he was convicted by the original court-martial and in respect of which his appeal is allowed; (b) any offence for which he could have been*



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*convicted at the original courtmartial on a charge of the first mentioned offence; (c) any offence charged in the alternative in respect of which the court-martial recorded no finding in consequence of convicting him of the first-mentioned offence. It is further says that a person who is to be retried under this section for an offence shall, if the Tribunal or the Supreme Court so directs, whether or not such person is being tried or retried on one or more of the original charges, no fresh investigation or other action shall be taken under the relevant provision of the Army Act, 1950 or the Navy Act, 1957 or the Air Force Act, 1950, as the case may be, or rules and regulations made thereunder, in relation to the said charge or charges on which he is to be retried.*

*14. Under Section 17, The Tribunal, while hearing and deciding an appeal under section 15, shall have the power to order production of documents or exhibits connected with the proceedings before the court-martial; to order the attendance of the witnesses; to receive evidence; to obtain reports from court-martial; order reference of any question for enquiry; appoint a person with special expert knowledge to act as an assessor; and to determine any question which is necessary to be determined in order to do justice in the case. Therefore, section 14, 15, 16 & 17 is a complete code so far as appeals arising against the order of Court Martial.*



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15. Since we are concerned with the appellate power of the Tribunal vis-a-vis and the section 164 of the Army Act, 1950, the Section 164 Army Act reads 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 Chief of the Army Staff] or any prescribed officer superior in command to the one who confirmed such finding or sentence, and the Central Government, [the Chief of the Army Staff] or other officer, as the case may be, may pass such order thereon as it or he thinks fit".

16. Before coming to Section 164, it may be relevant to mention that sentence of the Court Martial has to be confirmed u/s 153 of the Act and it clearly says that "no finding or sentence of a general, district or summary, court-martial shall



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*be valid except so far as it may be confirmed as provided by this Act". And the chapter 12 deals with the detail procedure for confirmation and section 164 comes into play after the confirmation of the finding has been made by the competent authority. Then u/s 164, the aggrieved party is given further power of challenging their finding before the competent authority i.e. the authority empowered to confirm the sentence of court martial. The confirming authority can satisfy the correctness, legality and propriety of such order or as to the regularity of any proceeding to which the order relates.*

*17. Then again under sub-section 2 of section 164 any person aggrieved by the finding or sentence can appeal to the central Government or Chief of the Army Staff or any prescribed officer superior in command to the one who confirmed such finding or sentence, and the Central Government or the chief of the Army staff or other officer, as the case may be, may pass such order thereon as it or he thinks fit.*

*18. Prior to coming of the Act of 2007, section 164 of the Army Act used to provide an appellate remedy. But to borrow the expression as made in the case of **Lt. Col. Prithi Pal Singh Bedi Case (Supra)** was a illusory remedy "Ceaser to Ceaser's wife'.*

*19. In this background, the question before us is if any person who has already filed an appeal u/s 164, then the*



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*Tribunal becomes functions officio to entertain the appeal u/s section 15 of the Act.*

20. *It may be relevant to mention here that Armed Forces Tribunal Act, 2007 is a subsequent legislation to the Act of Army Act, 1950 and we have already mentioned earlier the background in which the AFT Act, 2007 came into force. The section 39 of Act of 2007 clearly says that this act will have overriding effect. Section 39 reads:*

*"The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act".*

21. *Therefore, the primacy of this Act is beyond any doubt.*

*(1) That the section itself provides that this Act of 2007 will prevail if any other provision of Act are inconsistent in this Act of 2007 and (2) This is a subsequent legislation on the same subject. When two legislation appears on the same subject, the subsequent legislation have the affect of overruling the previous legislation if inconsistent, then later prevails. Section 15 of the Act of 2007, which provides a remedy to the person who is convicted by the Court Martial and this, is a judicial adjudicatory remedy over the administrative remedy under section 164 of the Army Act, 1950. In this connection, we may refer to the objects and Reasons and Preamble of the Act, which clearly lays down the aim and object behind enactment of this*



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*Act of 2007. The Act was brought by the Parliament because the anxiety was shown by the Apex Court in the case of **Lt.col. Prithi Pal Singh Bedi case** (supra) that the armed personnel don't have any independent adjudicatory institution where their grievances can be redressed, Therefore, this adjudicatory forum was constituted by the Parliament by enacting the Act of 2007. This is a subsequent enactment on the subject. The intention of this act is more than clear that it was brought about to redress the long awaited grievance of the armed forces that the appeal u/s 164 is not an appeal where armed personnel could feel satisfied that their matter has been examined by an independent body who is not connected with the armed forces. Section 15 of Act of 2007 has to be interpreted with the aims and objects read with preamble of the Act. Indian, UK & US courts has laid down various modes of interpretation of Statute & Consensus of judicial opinion is that interpretation should be such which should be purposive & bring forth the real intention of legislature. In order to bring out the real intention of legislature & the mischief which is sought to be remedied we have to see statement of object & reason, Preamble to find out what was the purpose for which this legislation was brought out.*

22. **Patanjali Shastri, CJ in Ashwani Kumar's case (AIR 1952 SC 369, p.378:1953 SCR1)** observed "As regards the proprietary of the reference to the Statement of Objects and



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*Reasons, it must be remembered that it seeks only to explain what reasons induced the mover to introduce the Bill in the House and what objects he sought to achieve." Following it, **Sinha, CJI observed:** "It is well settled that the statement of Objects and Reasons accompanying a Bill, when introduced in Parliament cannot be used to determine the true meaning and effect of the substantive provisions of the statute. They cannot be used except for the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation.*

23 to 26      xxx                  xxxx                  xxx

27.    *Section 39 clearly says that any provision which are inconsistent with this Act then provisions of this Act of 2007 will have overriding effect & prevail. "*

28 to 35      xxx                  xxxx                  xxx

36.    *Keeping in view the law laid down in the aforesaid cases, the legal question that emerges is that the power which was being exercised u/s 164 (2) of The Army Act, 1950 prior to the coming of the Act of 2007 of AFT was so called an administrative power and it was not a judicial determination or a judicial adjudication. Present Act confers a judicial adjudication of the orders passed in the court Martial. Therefore, the power conferred under Section 14 and 15 will prevail all the powers of under Section L64 of the Army Act, 1950. Since prior to the coming into force of the Act of 2007,*



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*there was no judicial forum constituted under the Army Act, Navy Act or Air force Act or by any other enactment, therefore, that appellate power was exercised by the confirming authority administratively. Now this power has been conferred on the Tribunal to adjudicate judicially under section 15 of the Act of 2007.*

*37. But the next question arises that what will be the position of the section 164 of the Army Act after coming into force of the AFT Act, 2007. The status of the section 164 will be subordinate to the that of the Tribunal and any order passed exercising section 164 will not deprive the judicial adjudication of the issue by the Tribunal. The power exercised under section 164 can be at best be said to be an administrative power and not a judicial power by any stretch of imagination.*

*38. There is no conflict between the two sections, Section 15 of the Act of 2007 and section 164(2) of the Army Act. Both can survive if our perception is clear that Section 15 is the judicial power and Section L64 is an administrative power. Section 15 gives a judicial review of the administrative action. However, once a judicial power is already exercised and orders are passed by the authorities, then administrative remedy provided u/s 164(2) automatically stand ousts. In this connection, one of the points which has been raised by the Jaipur bench is with reference of section 21 of the Act of 2007 i.e. exhaustion of the alternative remedy under the Act. Section 21 uses the word*



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*'ordinarily', an application shall not be admitted unless it is satisfied that applicant had availed the remedy available to him under the Act i.e. Army Act, Navy Act or Air Force Act as the case may be. The expression ordinarily does not mean to prohibit the jurisdiction of the judicial remedy under the Tribunal. This is a rule of prudence that the party should first exhaust as far as possible administrative remedy but that does not touch the jurisdiction of the Tribunal to adjudicate the matter judicially. The judicial determination of administrative action always take precedence over the administrative action. This is cardinal principle of judicial system. Therefore, section 21 will not abrogate the power of the Tribunal to entertain appeal against the order of Court Martial. Even pendency of petition u/s 164(2) of the Army Act will not prevent Tribunal to entertain appeal u/s 15 of the Act of 2007 against order of Court Martial order.*

*39. Therefore, we hold that view taken by the AFT (Jaipur Bench) does not lay down a correct law and we hereby over rule the same. The three questions which have been referred to the Tribunal are answered as under:*

*(1) Section 15 will over ride section 164 of the Army Act and the Tribunal has full jurisdiction to entertain the appeal notwithstanding any petition filed by aggrieved party u/s L64 of the Army Act, 1950.*



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(2) *The power u/s 15 of the Tribunal is not dependent on the statutory representation u/s t64 (2) of the Army Act, 1950. It is independent adjudicatory power and appeal against the order passed by the Court Martial or any connected therewith will be maintainable.*

(3) *The pendency of the petition under section L64 will not bar to exercise of power u/s 15 of the Act. Once the judicial determination has taken place then it will be binding on the parties and thereafter no further interference by the Section t64 of the Army Act is permissible.”*

13. The Hon’ble Supreme Court in **Kunhayammed and others versus State of Kerala and another**, (2006) 6 Supreme Court Cases 359 held that dismissal at the stage of special leave by non-speaking order does not constitute a *res judicata* and does not culminate in merger of impugned decision. Relevant portion of the same is reproduced hereunder:-

*“14. The exercise of jurisdiction conferred on this Court by Article 136 of the Constitution consists of two steps : (i) granting special leave to appeal; and (ii) hearing the appeal. This distinction is clearly demonstrated by the provisions of Order XVI of the Supreme Court Rules framed in exercise of the power conferred by Article 145 of the Constitution. Under Rule 4, the petition seeking special leave to appeal filed before the Supreme Court under Article 136 of the Constitution shall be in form No.28. No separate application for interim relief need be filed, which can be incorporated in the petition itself. If notice*



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*is ordered on the special leave petition, the petitioner should take steps to serve the notice on the respondent. The petition shall be accompanied by a certified copy of the judgment or order appealed from and an affidavit in support of the statement of facts contained in the petition. Under Rule 10 the petition for grant of special leave shall be put up for hearing ex-parte unless there be a caveat. The court if it thinks fit, may direct issue of notice to the respondent and adjourn the hearing of the petition. Under Rule 13, the respondent to whom a notice in special leave petition is issued or who had filed a caveat, shall be entitled to oppose the grant of leave or interim orders without filing any written objections. He shall also be at liberty to file his objections only by setting out the grounds in opposition to the questions of law or grounds set out in the S.L.P. On hearing the Court may refuse the leave and dismiss the petition for seeking special leave to appeal either ex-parte or after issuing notice to the opposite party. Under Rule 11, on the grant of special leave, the petition for special leave shall, subject to the payment of additional court fee, if any, be treated as the petition of appeal and it shall be registered and numbered as such. The appeal shall then be set down for hearing in accordance with the procedure laid down thereafter. Thus, a petition seeking grant of special leave to appeal and the appeal itself, though both dealt with by Article 136 of the*



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*Constitution, are two clearly distinct stages. In our opinion, the legal position which emerges is as under:-*

*1. While hearing the petition for special leave to appeal, the Court is called upon to see whether the petitioner should be granted such leave or not. While hearing such petition, the Court is not exercising its appellate jurisdiction; it is merely exercising its discretionary jurisdiction to grant or not to grant leave to appeal. The petitioner is still outside the gate of entry though aspiring to enter the appellate arena of Supreme Court. Whether he enters or not would depend on the fate of his petition for special leave;*

*2. If the petition seeking grant of leave to appeal is dismissed, it is an expression of opinion by the Court that a case for invoking appellate jurisdiction of the Court was not made out;*

*3. If leave to appeal is granted the appellate jurisdiction of the Court stands invoked; the gate for entry in appellate arena is opened. The petitioner is in and the respondent may also be JJ called upon to face him, though in an appropriate case, in spite of having granted leave to appeal, the court may dismiss the appeal without noticing the respondent.*

*4. In spite of a petition for special leave to appeal having been filed, the judgment, decree or order against which leave to appeal has been sought for, continues to be final, effective and binding as between the parties. Once leave to appeal has been*



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*granted, the finality of the judgment, decree or order appealed against is put in jeopardy though it continues to be binding and effective between the parties unless it is a nullity or unless the Court may pass a specific order staying or suspending the operation or execution of the judgment, decree or order under challenge.*

*Dismissal at stage of special leave - without reasons - no res judicata, no merger*

15. *Having so analysed and defined the two stages of the jurisdiction conferred by Article 136, now we proceed to deal with a number of decisions cited at the Bar during the course of hearing and dealing with the legal tenor of an order of Supreme Court dismissing a special leave petition. In Workmen of Cochin Port Trust Vs. Board of Trustees of the Cochin Port Trust and Another 1978 (3) SCC 119, a Three-Judges Bench of this Court has held that dismissal of special leave petition by the Supreme Court by a non-speaking order of dismissal where no reasons were given does not constitute res judicata. All that can be said to have been decided by the Court is that it was not a fit case where special leave should be granted. That may be due to various reasons. During the course of the judgement, their Lordships have observed that dismissal of a special leave petition under Article 136 against the order of a Tribunal did not necessarily bar the entertainment of a writ petition under Article 226 against the order of the Tribunal. The decision of*



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*Madras High Court in The Management of W. India Match Co. Ltd. Vs. Industrial Tribunal, AIR 1958 Mad 398, 403 was cited before their Lordships. The High Court had taken the view that the right to apply for leave to appeal to Supreme Court under Article 136, if it could be called a right at all, cannot be equated to a right to appeal and that a High Court could not refuse to entertain an application under Article 226 of the Constitution on the ground that the aggrieved party could move Supreme Court under Article 136 of the Constitution. Their Lordships observed that such a broad statement of law is not quite accurate, although substantially it is correct.*

**16. In *Indian Oil Corporation Ltd. Vs. State of Bihar and Ors.* - AIR 1986 SC 1780** there was a labour dispute adjudicated upon by an award made by the Labour Court. The employer moved the Supreme Court by filing special leave petition against the award which was dismissed by a non-speaking order in the following terms :-

*“The special leave petition is dismissed.”*

**17.** Thereafter the employer approached the High Court by preferring a petition under Article 226 of the Constitution seeking quashing of the award of the Labour Court. On behalf of the employee the principal contention raised was that in view of the order of the Supreme Court dismissing the special leave petition preferred against the award of the Labour Court it was not legally open to the employer to approach the High Court



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*under Article 226 of the Constitution challenging the very same award. The plea prevailed with the High Court forming an opinion that the doctrine of election was applicable and the employer having chosen the remedy of approaching a superior court and having failed therein he could not thereafter resort to the alternative remedy of approaching the High Court. This decision of the High Court was put in issue before the Supreme Court. This Court held that the view taken by the High Court was not right and that the High Court should have gone into the merits of the writ petition. Referring to two earlier decisions of this Court, it was further held (SCC pp. 148-50, para 6 & 8) :-*

*(T) the effect of a non-speaking order of dismissal of a special leave petition, without anything more indicating the grounds or reasons of its dismissal must, by necessary implication, be taken to be that this Court had decided only that it was not a fit case where special leave should be granted. This conclusion may have been reached by this Court due to several reasons. When the order passed by this Court was not a speaking one, it is not correct to assume that this Court had necessarily decided implicitly all the questions in relation to the merits of the award, which was under challenge before this Court in the special leave petition. A writ proceeding is a wholly different and distinct proceeding. Questions which can be said to have been decided by this Court expressly, implicitly or even constructively while dismissing the special leave petition*



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*cannot, of course, be re- opened in a subsequent writ proceeding before the High Court. But neither on the principle of res judicata nor on any principle of public policy analogous thereto, would the order of this Court dismissing the special leave petition operate to bar the trial of identical issues in a separate proceeding namely, the writ proceeding before the High Court merely on the basis of an uncertain assumption that the issues must have been decided by this Court at least by implication. It is not correct or safe to extend the principle of res judicata or constructive res judicata to such an extent so as to found it on mere guesswork.*

\* \* \*

*It is not the policy of this Court to entertain special leave petitions and grant leave under Article 136 of the Constitution save in those cases where some substantial question of law of general or public importance is involved or there is manifest injustice resulting from the impugned order or judgment. The dismissal of a special leave petition in limine by a non-speaking order does not therefore justify any inference that by necessary implication the contentions raised in the special leave petition on the merits of the case have been rejected by this Court. It may also be observed that having regard to the very heavy backlog of work in this Court and the necessity to restrict the intake of fresh cases by strictly following the criteria aforementioned, it has very often been the practice of this Court*



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*to grant special leave in cases where the party cannot claim effective relief by approaching the concerned High Court under Article 226 of the Constitution. In such cases also the special leave petitions are quite often dismissed only by passing a non-speaking order especially in view of the rulings already given by this Court in the two decisions afore-cited, that such dismissal of the special leave petition will not preclude the party from moving the High Court for seeking relief under Article 226 of the Constitution. In such cases it would work extreme hardship and injustice if the High Court were to close its doors to the petitioner and refuse him relief under Article 226 of the Constitution on the sole ground of dismissal of the special leave petition.* (emphasis supplied)

18. *In our opinion what has been stated by this Court applies also to a case where a special leave petition having been dismissed by a non-speaking order the applicant approaches the High Court by moving a petition for review. May be that the Supreme Court was not inclined to exercise its discretionary jurisdiction under Article 136 probably because it felt that it was open to the applicant to move the High Court itself. As nothing has been said specifically in the order dismissing the special leave petition one is left merely guessing. We do not think it would be just to deprive the aggrieved person of the statutory right of seeking relief in review jurisdiction of the High Court if a case for relief in that jurisdiction could be made*



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*out merely because a special leave petition under Article 136 of the Constitution had already stood rejected by the Supreme Court by a non-speaking order.*

19. *In Rup Diamonds and others Vs. Union of India and others AIR 1989 SC 674, the law declared by this Court is that it cannot be said that the mere rejection of special leave petition could, by itself, be construed as the imprimatur of this Court on the correctness of the decision sought to be appealed against.*

20. *In Wilson Vs. Colchester Justices 1985 (2) All England Law Reports 97, the House of Lords stated;*

*There are a multitude of reasons why, in a particular case, leave to appeal may be refused by an Appeal Committee. I shall not attempt to embark on an exhaustive list for it would be impossible to do so. One reason may be that the particular case raises no question of general principle but turns on its own facts. Another may be that the facts of the particular case are not suitable as a foundation for determining some question of general principle.*

*....Conversely the fact that leave to appeal is given is not of itself an indication that the judgments below are thought to be wrong. It may well be that leave is given in order that the relevant law may be authoritatively restated in clearer terms.*

21. *In Supreme Court Employees Welfare Association Vs. Union of India and Another 1989 (4) SCC 187, and Yogendra*



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*Narayan Chowdhury and Others Vs. Union of India and Others*  
*1996 (7) SCC 1, both decisions by Two-Judges Benches, this*  
*Court has held that a non-speaking order of dismissal of a*  
*special leave petition cannot lead to assumption that it had*  
*necessarily decided by implication the correctness of the*  
*decision under challenge.*

22 to 43                      XXXX                      XXXX                      XXXX

44.    *To sum up our conclusions are :-*

*(i) Where an appeal or revision is provided against an order*  
*passed by a court, tribunal or any other authority before*  
*superior forum and such superior forum modifies, reverses or*  
*affirms the decision put in issue before it, the decision by the*  
*subordinate forum merges in the decision by the superior forum*  
*and it is the latter which subsists, remains operative and is*  
*capable of enforcement in the eye of law.*

*ii) The jurisdiction conferred by Article 136 of the Constitution*  
*is divisible into two stages. First stage is upto the disposal of*  
*prayer for special leave to file an appeal. The second stage*  
*commences if and when the leave to appeal is granted and*  
*special leave petition is converted into an appeal.*

*(iii) Doctrine of merger is not a doctrine of universal or*  
*unlimited application. It will depend on the nature of*  
*jurisdiction exercised by the superior forum and the content or*  
*subject-matter of challenge laid or capable of being laid shall*  
*be determinative of the applicability of merger. The superior*



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*jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.*

*iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.*

*v) If the order refusing leave to appeal is a speaking order, i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the apex court of the country. But, this does not amount to saying that the order of*



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*the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.*

*(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.*

*(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule (1) of Order 47 of the C.P.C.”*

14. The appeal was filed against OA No.176 of 2015 dated 07.04.2015 titled as **Hav Sham Das D versus UOI and others**, which was dismissed by the Hon’ble Apex Court in the case titled as **Hav Sham Das D versus UOI and others** on 03.07.2015. The relevant extract of the same is as under:-

*“In the peculiar facts and circumstances of this case, we find no ground to interfere with the impugned order passed by the Armed Forces Tribunal, Principal Bench, New Delhi.”*

15. A perusal of the above shows that the above referred to decision is non-speaking. The Hon’ble Supreme Court in **Kunhayammed and others versus State of Kerala and another** (supra) held that non-speaking



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order does not constitute res judicata and does not culminate in merger of the impugned decision.

16. Further, the question regarding the maintainability of an Original Application under Section 15 of the Armed Forces Tribunal Act, 2007 before the Tribunal was already settled in OA No.471 of 2010 dated 19.10.2010 titled as **Ex-Hav. Parmeshwar Ram versus Union of India and others** (Coram of 3) by the Armed Forces Tribunal, Principal Bench, New Delhi in 2010, against which no appeal was filed. Whereas in OA No.176 of 2015 titled as **Hav Sham Das D versus UOI and others** (Bench consisting of Coram of 2) vide its order dated 07.04.2015 held that the appeal under Section 15 against the order passed by the Court Martial would not be maintainable before the Tribunal. Though the same was challenged before the Hon'ble Supreme Court and the SLP filed was dismissed on 03.07.2015 but not on merits, therefore as per the law laid down by the Hon'ble Supreme Court in **Kunhayammed and others versus State of Kerala and another** (supra), a non-speaking order of dismissal of a special leave petition cannot lead to assumption that it had necessarily decided by implication the correctness of the decision under challenge.

17. Therefore, a decision in OA No.176 of 2015 titled as **Hav Sham Das D versus UOI and others** (Bench consisting of Coram of 2) dated 07.04.2015 without considering the earlier decision by Coram of 3 in OA No.471 of 2010 dated 19.10.2010 titled as **Ex-Hav Parmeshwar Ram v. Union of India and others**, which had attained finality as it was never challenged, is per incuriam, and we do not agree with the same.



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18. Therefore, we do not agree with the reasoning given by the learned Tribunal in dismissing the appeals as not maintainable. The order dated 16.05.2024 passed by the learned Armed Forces Tribunal, Regional Bench, Chandigarh at Chandimandir in OA No.755 of 2023 and order dated 22.08.2024 passed by learned Armed Forces Tribunal, Regional Bench, Chandigarh at Chandimandir in OA No.926 of 2024, are set aside.

19. Since the disputed question of facts is involved in the present case, therefore, we remand the matter to the learned Tribunal with the direction to decide the same afresh after giving due notice(s) to all concerned.

20. The petitions stand disposed of.

21. Pending application(s), if any, stand disposed of.

(SURESHWAR THAKUR)  
JUDGE

(SUDEEPTI SHARMA)  
JUDGE

14.10.2024  
A.Kaundal

|                           |        |
|---------------------------|--------|
| Whether Speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |