

A.F.R.

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RESERVED**Court No. - 1****Case :-** WRIT - A No. - 8782 of 2022**Petitioner :-** Ls Gi (S) Abhishek Kumar**Respondent :-** Union Of India Thru. Secy. Ministry Of Defence (Navy), New Delhi And Others**Counsel for Petitioner :-** Manish Kumar Rai,Indrajeet Shukla**Counsel for Respondent :-** A.S.G.I.,Devrishi Kumar**Hon'ble Attau Rahman Masoodi,J.****Hon'ble Om Prakash Shukla,J.****(Per Om Prakash Shukla, J.)**

This judgment has been divided into following sections to facilitate analysis :-

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A. INTRODUCTION

(1) The petitioner has preferred the present writ petition under Article 226 of the Constitution of India for quashing the following two judgments/orders of the learned Armed Forces Tribunal, Regional Bench at Lucknow (hereinafter referred to as '**Tribunal**') :-

- I. Judgment/Order dated 10.08.2022, whereby Original Application No. 276 of

2022 filed by the petitioner under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as “**Act, 2007**”) against the order of summary trial dated 23.02.2021 under Sections 60 (d), 68 and 77 (2) of the Navy Act, 1957, by which the petitioner was held guilty and sentenced to reduction in rank and to suffer deprivation of badges of good conduct, has been dismissed as being not maintainable on the ground that the said order of summary trial dated 23.02.2021 is not a “service matter” in view of Section 3 (o) (ii) read with clause (iii) of the Act, 2007.

- II. Judgment/Order dated 06.10.2022, whereby Review Application No. 86 of 2022, seeking to review the aforesaid judgment/order dated 10.08.2022 passed in Original Application No. 276 of 2022, has been dismissed.”

B. FACTUAL MATRIX

- (2) The petitioner was enrolled in Indian Navy on 01.02.2007. He was promoted to the post of Petty Officer (GS) on 01.03.2017 and while continuing to work on the said post in Indian Navy, a summary trial under Sections 68 and 77 (2) of the Navy Act, 1957 was conducted against the petitioner for the alleged charges that unauthorized quantity of eighteen liquor bottles, which was said to be purchased by the petitioner from Military Canteen at Visakhapatnam, was found in his possession, wherein the petitioner took a stand that these liquor bottles were purchased for the purposes of consumption in upcoming marriage function of his brother-in-law. In the said summary trial concluded vide order dated 23.02.2021, the petitioner was

punished with reduction in rank and deprivation of good conduct badges. Aggrieved by the order dated 23.02.2021, the petitioner preferred a representation dated 09.03.2021 under Section 23 of the Navy Act, 1957, however, during pendency of this representation, the petitioner was discharged from service vide order dated 02.08.2021 after completion of initial engagement of 15 years of service, even though the petitioner was willing to extend his engagement of service.

- (3) Aggrieved by the aforesaid order of punishment dated 23.02.2021 for “reduction in rank and deprivation of good conduct badges” passed in summary trial as well as order of discharge/release dated 02.08.2021, the petitioner instituted Original Application No. 276 of 2022 under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as ‘Act, 2007’) with the following prayers :-

A. To quash the punishments awarded to the applicant vide Punishment Warrant no.1/2021 dated 23.02.2021 (as contained in Annexure 1) being disproportionate in terms of Hon’ble Supreme Court Order in “Bhagat Ram and Ranjit Thakur case”.

B. To set aside the Order/Authority of Release no. LRDO I:01/2022 PART 1 SL 684 dated 02/08/2021 passed by the respondents, as provided in discharge certificate no. 76318 (as Contained in Annexure 2) of applicant, of discharge from service of applicant and to direct the respondents to reinstate the applicant in the service with all consequential benefits, as his re-engagement Performa was duly completed and recommended by the then Commanding Officer, by awarding some minor punishment for the procedural lapse.

C. Any other relief as considered deemed fit and proper in the circumstances by this Hon'ble Tribunal be awarded in favour of the applicant."

- (4) When we peruse the prayer clause of the Original Application, what we find is that the petitioner had raised two basic grievances in the Original Application. The first grievance raised by the petitioner before the Tribunal was in relation to punishment awarded to him in the summary trial, in respect of which the petitioner is alleged to have moved a statutory representation, which is still pending. The second grievance raised by the petitioner before the Tribunal pertains to his discharge from service even though his re-engagement performa was duly completed and recommended by the then Commanding Officer, by awarding some minor punishment for the procedural lapse.
- (5) Vide order dated 05.04.2022, the original application was admitted by the learned Tribunal. However, the Tribunal, while considering the Original Application finally on 10.08.2022, arrived at a conclusion that since punishment of reduction in rank and deprivation of badges of good conduct have been awarded to the petitioner in a summary trial, therefore, in view of Section 3 (o) (ii) read with clause (iii) of the Act, 2007, the Tribunal has no jurisdiction to try the original application. In this backdrop, the learned Tribunal dismissed the original

application being not maintainable vide judgment/order dated 10.08.2022.

- (6) The petitioner, thereafter, had filed Review Application No. 86 of 2022 seeking to review the judgment/order dated 10.08.2022, which too was rejected by the learned Tribunal vide judgment/order dated 06.10.2022.
- (7) Feeling aggrieved by both the aforesaid judgments/orders dated 10.08.2022 and 06.10.2022, the petitioner has preferred the instant writ petition.

C. SUBMISSIONS

- (8) Heard Shri Indrajeet Shukla and Shri Manish Kumar Rai, learned Counsel representing the petitioner and Shri Devrishi Kumar, learned Counsel representing the respondents/Union of India.
- (9) Impeaching the impugned judgment/order of the learned Tribunal, Shri Indrajeet Shukla representing the petitioner has argued that the punishment of reduction in rank and deprivation of good conduct badges provided in Chapter IX, Section 81 of the Navy Act, 1957 is a normal incidence and condition of service. A plain reading of the provision contemplated under Section 3 (o) of the Act, 2007 reveals that service matters include remuneration, post-retirement benefits, appointment,

enrollment, probation, confirmation, seniority, training, promotion, reversion, termination of service etc. Further, clause (iv) of sub-section (o) of Section 3 of the Act, 2007 expands the definition of service matters by using the phrase ‘any other matter, whatsoever’. According to the learned Counsel, Clause (iv) of Section 3 (o) of the Act, 2007 is exhaustive in nature and covers all service matters with exception to the items contained in sub-section (i), (ii), (iii) and (iv), therefore, 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. If these words are not taken into account, it shall make Clause (iv) of Section 3 (o) of the Act, 2007 redundant, which is not permissible under interpretative jurisprudence and further it would deprive the right of army personnel to approach the Tribunal for expeditious disposal of a dispute relating to punishment awarded to them. In this backdrop, the learned Counsel has submitted that a conjoint reading of Article 323-A of the Constitution of India and Section 3 (o) of the Act, 2007 reveals that the Administrative Tribunals are established by Parliament for the adjudication or trials of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services, hence the punishment of reduction in rank and deprivation of good conduct badges awarded by means of summary trial being a harsh punishment which affects the service career of petitioner is a “condition of

service” and as such the same is amenable before the Tribunal. Thus, according to him, the learned Tribunal has erred in dismissing the original application filed by the petitioner by holding that the original application is not maintainable before the Tribunal.

- (10) Learned Counsel drawing our attention to the reasoning given by the learned Tribunal while dismissing the original application as not maintainable, has argued that the learned Tribunal, while dismissing the original application as not maintainable, has opined that none of the three Acts, namely, Army Act, Navy Act and Air Force Act talk about the punishment of reversion and they only talk about reduction in rank besides other punishments, which according to learned Counsel is patently erroneous for the reason that a conjoint reading of Clause-(ii) and Clause-(iii) of Section 3 (o) of the Act, 2007 gives an impression that both the reversion and reduction in rank may be one and same thing with regard to punishments provided in Navy Act, Army Act and Air Force Act. More so, the Apex Court in **State of U.P. and others Vs. Sughar Singh** : AIR 1974 SC 423 has held that *“the order of reversion by way of punishment amounts to reduction in rank. If the officer is promoted substantively to a higher post or rank, he gets the right to that particular post or rank and if he is afterwards reverted to the lower post or rank which he held before it is a reduction in rank in the technical sense in which*

the expression is used in Article 311 of the Constitution of India.” Thus, learned Counsel submits that since reversion in rank by way of punishment is nothing but is a reduction in rank, hence the punishment of reduction in rank awarded to the petitioner falls under Section 3 (o) (ii) under the term “reversion” and therefore, the original application filed by the petitioner is amenable before the learned Tribunal.

- (11) Placing reliance upon the judgment of this Court in **Major Kunwar Ambreshwar Singh Vs. The Union of India, Delhi** : (2014) 5 All LJ 156 : 2014 SCC OnLine All 15134, learned Counsel representing the petitioner has urged that while dismissing the original application filed by the petitioner as not maintainable vide impugned judgment/order dated 10.08.2022, the learned Tribunal, though had taken note of **Major Kunwar Ambreshwar Prasad Singh (supra)**, however, has erroneously laid reliance upon the decision of Principal Bench of the Tribunal in the case of **Dfr Shatrughan Singh Tomar Vs. Union of India and others** (O.A. No. 665 of 2020, decided on 07.04.2021) for the reasons that in hierarchy, the learned Tribunal are not over and above the High Court and since High Court being the Constitutional Court has interpreted the provisions of Armed Forces Tribunal Act, 2007 particularly Section 3 (o) (i) (ii) (iii) and (iv) in the case of **Major Kunwar Ambreshwar Singh (supra)** in a specified manner, therefore, it was not open for the Principal Bench to take different views in

the case of **Dfr Satrughan Singh Tomar (Supra)**. Learned Counsel submits that if the Principal Bench of the learned Tribunal had any doubt with respect to the law laid down by this Court in the case of **Major Kunwar Ambreshwar Singh (Supra)**, then, the Principal Bench of the learned Tribunal ought to have made a reference to the Constitutional Courts to clarify the doubt but in doing so, the Principal Bench of the learned Tribunal in the case of **Dfr. Shatrughan Singh Tomar (supra)** had taken altogether a different view what this Hon'ble High Court had taken in **Major Kunwar Ambreshwar Singh (supra)**.

- (12) Learned Counsel for the petitioner has also placed reliance upon the judgment of High Court of Punjab and Haryana at Chandigarh in **N.K. Santosh Lohar Vs. Union of India and others (CWP No. 3118-2023, decided on 03.10.2023)** and the judgment of Uttarakhand High Court in **Ex. Havildar Birendra Singh Negi Vs. Union of India & others : 2012 (18) S.C.T. 846** and has contended that in **N.K. Santosh Lohar (Supra)**, High Court of Punjab and Haryana at Chandigarh, after dealing with the issue of award of punishment of 'severe reprimand' to an army personnel and also dealing with Section 3 (o) of the Armed Forces Tribunal Act, 2007, came to the conclusion that in view of the judgments of Allahabad High Court in **Major Kunwar Ambreshwar Singh (supra)** and **Ex. Havildar Birendra Singh Negi (supra)**, the petition against the

punishment of 'severe reprimand' is maintainable before the learned Tribunal. Learned Counsel, thus, has submitted that the original application filed by the petitioner is maintainable before the learned Tribunal and the learned Tribunal has erroneously dismissed the original application being not maintainable vide judgment/order dated 10.08.2022.

- (13)** *Per contra*, learned Counsel representing the Union of India has vehemently opposed the aforesaid submissions advanced by the learned Counsel for the petitioner and has submitted that a plain reading of the statement of objects and reasons of Section 3 (o) of the Act, 2007, Article 323-A of the Constitution of India and Section 33 of the Act, 2007 would show that the Tribunal was constituted to deal with matters of pendency of cases of dismissal by way of court martial. Section 3 (o) of the Act, 2007 further reveals the legislative intent by letting all know what to be considered as 'service matters' and what not to be treated as service matters amenable to the jurisdiction of the Tribunal. Learned Counsel submits that Article 323-A of the Constitution of India and Section 33 of the Act, 2007 would reveal the extent of the bar on jurisdiction of the Civil Courts. Thus, the petitioner may not have any remedy before the learned Tribunal but the same cannot be said to hold good for the High Court. Hence, the claim of the petitioner is untenable and the petition deserves to be dismissed.

(14) So far as the judgment of this Court in **Major Kunwar Ambreshwar Singh (Supra)** is concerned, learned Counsel representing the Union of India has submitted that decision of **Major Kunwar Ambreshwar Singh (Supra)** is not applicable in the facts and circumstances of the case as the decision of **Major Kunwar Ambreshwar Singh (Supra)** has been distinguished by the Principal Bench of the learned Tribunal in **Dfr. Shatrughanan Singh Tomar (supra)**.

D. ISSUES

(15) Based on the submissions which have been canvassed on behalf of the parties, question arises for determination is whether the punishment of reduction in rank and deprivation of good conduct badges awarded to the petitioner by means of summary trial, is amenable before the Armed Forces Tribunal or not.

(16) Before answering the aforesaid question, we deem it apt to reproduce the relevant Sections of the Act, 2007 and relevant Articles of the Constitution of India.

E. RULES & ARTICLE

(17) The Armed Forces Tribunal (in short, AFT) was constituted under the Armed Forces Tribunal Act, 2007, enacted with the purpose to provide for the adjudication or trial by AFT of disputes and complaints with respect to commission, appointments, enrollment and conditions of service in respect

of persons subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950 and also to provide for appeals arising out of orders, findings or sentences of court martial held under the said Acts and for matters connected therewith or incidental thereto. Section 3 (o) under Chapter-I of the Act, 2007 is relevant, which reads as follows :-

“3. (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 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);

(q) “Tribunal” means the Armed Forces Tribunal established under section 4”

- (18) Chapter III of the Act, 2007 deals with the jurisdiction, power and authority of the Tribunal in service matters. Section 14 (1) of the Act, 2007 is relevant, which reads as under :-

“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.”

- (19) Section 15 of the Act, 2007 deals with jurisdiction, powers and authority in matters of appeal against court martial. Section 15 is relevant and the same is reproduced as under:-

“15. Jurisdiction, powers and authority in matters of appeal against court martial.—(1) Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable under this Act in relation to appeal against any order, decision, finding or sentence passed by a court martial or any matter connected therewith or incidental thereto.

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

(3) The Tribunal shall have power to grant bail to any person accused of an offence and in

military custody, with or without any conditions which it considers necessary:

Provided that no accused person shall be so released if there appears reasonable ground for believing that he has been guilty of an offence punishable with death or imprisonment for life.

(4) The Tribunal shall allow an appeal against conviction by a court martial where—

(a) the finding of the court martial is legally not sustainable due to any reason whatsoever; or

(b) the finding involves wrong decision on a question of law; or

(c) there was a material irregularity in the course of the trial resulting in miscarriage of justice, but, in any other case, may dismiss the appeal where the Tribunal considers that no miscarriage of justice is likely to be caused or has actually resulted to the appellant:

Provided that no order dismissing the appeal by the Tribunal shall be passed unless such order is made after recording reasons therefor in writing.

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

(6) Notwithstanding anything contained in the foregoing provisions of this section, the Tribunal shall have the power to—

(a) substitute for the findings of the court martial, a finding of guilty for any other offence for which the offender could have been lawfully found guilty by the court martial and pass a sentence afresh for the offence specified or involved in such findings under the provisions of the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950), as the case may be; or

(b) if sentence is found to be excessive, illegal or unjust, the Tribunal may—

(i) remit the whole or any part of the sentence, with or without conditions;

(ii) mitigate the punishment awarded;

(iii) commute such punishment to any lesser punishment or punishments mentioned in the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), as the case may be;

(c) enhance the sentence awarded by a court martial:

Provided that no such sentence shall be enhanced unless the appellant has been given an opportunity of being heard;

(d) release the appellant, if sentenced to imprisonment, on parole with or without conditions;

(e) suspend a sentence of imprisonment;

(f) pass any other order as it may think appropriate.

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

(20) Chapter IV deals with procedure. Section 21 of the Act, 2007

reads as under :-

“21. Application not to be admitted unless other remedies exhausted.—(1) The Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of the remedies available to him under 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, and respective rules and regulations made thereunder.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950), and respective rules and regulations—

(a) if a final order has been made by the Central Government or other authority or officer or other person competent to pass such order under the said Acts, rules and regulations, rejecting any petition preferred or representation made by such person;

(b) where no final order has been made by the Central Government or other authority or officer or other person competent to pass such order with regard to the petition preferred or representation made by such person, if a period of six months from the date on which such petition was preferred or representation was made has expired”

(21) Section 33 of the Act, 2007 reads as under :-

“3. Exclusion of jurisdiction of civil courts.—

On and from the date from which any jurisdiction, powers and authority becomes exercisable by the Tribunal in relation to service matters under this Act, no Civil Court shall have, or be entitled to exercise, such jurisdiction, power or authority in relation to those service matters.”

(22) Section 34 of the Act, 2007 is reproduced as under :-

“4. Transfer of pending cases.—(1) Every suit, or other proceeding pending before any court including a High Court or other authority immediately before the date of establishment of the Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based, is such that it would have been within the jurisdiction of the Tribunal, if it had arisen after such establishment within the jurisdiction of such Tribunal, stand transferred on that date to such Tribunal.

(2) Where any suit, or other proceeding stands transferred from any court including a High Court or other authority to the Tribunal under sub-section (1),—

(a) the court or other authority shall, as soon as may be, after such transfer, forward the records of such suit, or other proceeding to the Tribunal;

(b) the Tribunal may, on receipt of such records, proceed to deal with such suit, or other

proceeding, so far as may be, in the same manner as in the case of an application made under sub-section (2) of section 14, from the stage which was reached before such transfer or from any earlier stage or de novo as the Tribunal may deem fit.”

(23) The Armed Forces Tribunal Act, 2007 has been enacted under the provisions of Article 323-A of the Constitution of India, 1950, which reads as under:-

“323A. Administrative tribunals.—(1) Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government.

(2) A law made under clause (1) may—

(a) provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States;

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;

(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;

(d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to the disputes or complaints referred to in clause (1);

(e) provide for the transfer to each such administrative tribunal of any cases pending

before any court or other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment;

(f) repeal or amend any order made by the President under clause (3) of article 371D;

(g) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as Parliament may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

(3) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force”

F. ANALYSIS & FINDINGS

(24) Having enumerated the various provisions of law, which are applicable to the facts of the present case, this Court finds that the order under challenge before the learned Tribunal was the order dated 23.02.2021 passed in summary trial under Sections 60 (d), 68 and 77 (2) of the Navy Act, 1957, by which the petitioner was held guilty and sentenced to reduction in rank and to suffer deprivation of badges of good conduct. Apparently, the learned Tribunal, though at initial stage admitted the original application vide order dated 05.04.2022, however, on later stage has dismissed the original application as not maintainable *inter alia* on the ground that the punishment of reduction of rank and deprivation of badges of good conduct,

challenged in the original application have been awarded in summary trial and hence it is not a 'service matter' in view of Section 3 (o) (ii) read with clause (iii) of the Act and as such, the learned Tribunal has no jurisdiction to try the original application.

(25) However, this Court finds that a bare perusal of Section 3 (o) of the Act, 2007 reveals that service matters include remuneration (including allowances), pension, other retirement benefits, tenure including commission, appointment, enrollment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions. Further, clause (iv) of sub-section (o) further expands the definition of service matters by usage of the phrase "any other matter, whatsoever", which makes the said clause exhaustive in nature and covers all service matters with exception to the items contained in sub-clause (i), (ii), (iii) and (iv) of Section (o) of Act 2007. Thus, apparently, the Legislature to their wisdom has included all matters which correlate to service matters or incident of service of the army personnel, except the exception provided in the Act itself.

(26) This Court also finds that one of the exceptions provided in sub-clause (iv) of Section 3 of Act 2007 entails as follows:

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

(27) Apparently, the learned Tribunal relied heavily on the aforesaid sub-clause and went on to hold that the Original Application filed by the petitioner to be not-maintainable. Interestingly, although the learned Tribunal observed that a conjoint reading of clause (ii) and (iii) gave an impression that both reversion and reduction in rank are one and the same thing with regard to punishment provided under the Act, 2007, however, went on to hold that when a punishment was awarded through the process of summary disposal or trial, only the punishment of dismissal would be treated as a service matter and not any other punishment because clause (ii) cannot be read in isolation and when it is read together with clause (iii) and proviso 3(o) (iv) of clause (iv), suffice it to mention that it sufficiently at if any punishment is awarded in summary court-martial, it is not a service matter, except in the case of dismissal or punishment of more than three months.

(28) First & foremost, this Court finds that nowhere in the Act of 2007, the words “Service matters” have been defined. Section 3 (o) of the Act, 2007 is merely illustrative and enumerates as to what all matters would be construed as “Service matters” or otherwise. The said section unfolds with a general and all-inclusive proposition by using the phrase that “*all matters relating to the conditions of their service*” shall be “*Service matters*” in relation to the person’s subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950. Further,

as an illustration, the said Section enumerates three incidents of service conditions in the following manner :-

- 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.

(29) Since Section 3(o) of the Act, 2007 clearly says that all matters relating to the conditions of service would be construed as “Service matter”, in order to give a harmonious and purposive interpretation of section 3(o)(iii) of the Act, 2007, it has to be construed that all summary disposal and trial would be a service matter including where the punishment of dismissal is awarded. This Court finds that the said harmonious interpretation is supported by the next clause 3(o)(iv) of the Act, 2007, which is a residual clause as it encompasses within it all service conditions by using the phrase “any other matter, whatsoever”. The use of the said phrase by the legislature is not accidental but is indicative of the fact that the legislature in its wisdom was although not able to foresee and enumerate all the incidences of service conditions, but inserted and enacted the residual clause to include all incidence of service by using the phrase “any other matter, whatsoever” in clause (iv) of Section 3 (o) of the Act, 2007. Thus, the legislature always intended to

include all the incidences of service conditions to be service matter, so as to be amenable to the Tribunal, keeping in mind the larger objective for which these tribunals were constituted. However, there is a caveat, in the sense that the latter part of Section 3(o) of the Act, 2007 says that certain matter would not be included in the service matter, wherein it enumerates four sub-clauses namely (i) certain orders issued under Section 18 of Army Act, Section 15 of the Navy Act and Section 18 of the Air Force Act. (ii) Transfer & posting under the said three Act, (iii) leave of any kind and (iv) summary court martial, except where the punishment is of dismissal or imprisonment for more than three months.

(30) No doubt, the intent of the legislature in enacting and providing for the exclusion clause signifies that the legislature intended to keep certain incidence of service out of the purview of the Tribunal, however it is seen that although clause (i), (ii) and (iii) of Section 3 (o) of the Act, 2007 can be clubbed together under the same category of administrative action, however, the same cannot be true for clause (iv) of Section 3 (o) of the Act, 2007, which is in the nature of adjudicatory action.

(31) This Court is conscious of the fact that the very object of the constitution of the Tribunal was to provide for appeals arising out of orders, findings of sentences of court-martial held under the said Acts and for matter connected therewith or incidental thereto. The object of the Act although uses the term “court-

martial” but does not define it any further by qualifying the said term by using of any prefixes, like summary or otherwise. Further, Section 3(f) relating to definition of “court martial” also does not use or explain the word “summary” as it merely says that court martial means a court martial held under the Army Act or the Navy Act including the disciplinary courts constituted under the Act or the Air Force Act, 1950.

- (32)** However, Section 108 of the Army Act, relating to kinds of court-martial says there are four types of court-martials namely (a) general court-martial, (b) district courts-martial, (c) Summary general courts-martial and (d) summary courts-martial and Section 120 of the said Act relating to the powers of summary court denotes that it has sweeping powers to try any offence punishable under the said Act and empowers the ‘summary court martial’ to pass any sentence which may be passed under this Act, except the sentence of death of transportation. Thus, this court finds that although the adjudicatory procedure in a “summary court martial” may be summary in nature, however the punishment may not be summary as any degree of punishment can be awarded in the said court martial, except the sentence of death or transportation. Since the punishment awarded in summary court martial is serious and grave in nature, to interpret clause 3(o) (iv) sub-clause (iv) in the restrictive manner of excluding it from the purview of “service matter” would be a travesty of

Justice and an infringement of the fundamental right of the petitioner, especially when by its nature “summary court martial” does not prescribe for a detailed trial and right of cross-examination. Thus, a greater responsibility is shouldered on the Tribunal as an appellate body to examine the details & nature of the said “summary court martial”, so as to uphold the rule of law and that of equal protection of law as is available to any citizen of this country. This court finds that to maintain uniformity and harmony between the two parts of section 3(o) of the Act, 2017, a purposive interpretation has to be given to the said clause by construing that clause (iv) of inclusion part needs to be construed to include punishment other than the punishment of dismissal, so that there is no violation to other clauses of section 3(o) of the Act, 2017. The said interpretation appears to be sound on legal principles and practicable aspect as in the absence of the outcome of any “summary court martial” being not amenable to the Tribunal, the same would lead to flooding this court as well as the Hon’ble Apex Court with writ petitions challenging such outcome, which cannot be the purview of law or the object for which the Tribunal was constituted.

- (33)** Further, there are two aspects of the matter, in as much as this Court finds that Section 14 of the Act, 2007, reproduced hereinabove, clearly provides that the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and

authority, exercisable immediately before that day by all Courts in relation to all service matters. Further, Section 15 of the Act, 2007 empowers the Tribunal with the jurisdiction, powers and authority in relation to appeal against any order, decision, finding or sentence passed by a court martial or any matter connected therewith or incidental thereto. Thus, in the present case, we do not see any reason as to why the application of the petitioner could not have been entertained under Section 15 of the Act, 2007 as an appeal against any nature of order passed in court martial proceedings.

(34) This Court finds that recently the Punjab and Haryana High Court when confronted with the aforesaid proposition of law, has also expressed similar view in a bunch of matters in “**N.K. Santosh Lohar V/s Union of India**” (CWP No. 3118 of 2023 decided on 03.10.2023) in the following words:-

“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....”*

(35) In **Major Kunwar Ambreshwar Singh (supra)**, a Co-ordinate

Bench of this Court, while taking note of the aforesaid

provisions as well as number of authorities on the question of interpretation of the constitutional provisions, opined that while interpreting the provisions contained in Section 3 (o) of the Act, 2007, the provisions contained in Clause (iv) mentioning the words “*any other matter; whatsoever,*” cannot be excluded. Furthermore, in case these words are not taken into account, it shall make Clause (iv) redundant and otiose which is not permissible under interpretative jurisprudence.

(36) This Court finds that the aforesaid interpretation is supported by the interpretation given by the Hon’ble High Court of Uttarakhand in the case of **Ex Havildar Birendra Singh Negi Vs Union of India** : 2012 (18) S.C.T. 846, wherein Justice Sudhanshu Dhulia of the High Court of Uttarakhand (as he was then), observed in the following manner:

“18. According to the learned Tribunal, therefore, what was primarily challenged before the Tribunal was an order which was summary disposal in nature, in which a punishment of "severe reprimand" was awarded to the petitioner. In other words, had an order of "dismissal" been passed in the summary disposal order, only in that eventuality it would have been a subject matter for adjudication by the Tribunal.

19. Learned counsel for the petitioner Mr. Lalit Kumar has taken great pains in taking us through various provisions of the Army Act, the Navy Act as well as the Air Force Act, and he has then tried to demonstrate that in any case an order of punishment of dismissal cannot be awarded by way of a "summary disposal" and, therefore, in Section 3(o)(iii) the word "where the punishment of dismissal is awarded" is rather superfluous and has no meaning. Though nothing contrary has been shown to this Court on this aspect, all the same, having noted this aspect this Court refrains from stating anything further and will proceed with the presumption that there is a punishment of dismissal in summary disposal. But having assumed

this presumption of the Tribunal to be correct was it the intention of the Legislature that the Armed Forces Tribunal will not have jurisdiction in the matter when in a summary disposal any other punishment, but that of dismissal has been awarded.

20. *In order to arrive at the correct answer, we will again have to re-appreciate the definition of "service matters", on which the entire reliance has been placed by the learned Tribunal. The first part of Section 3(o) where "service matters" have been defined has to be divided into two. The first part which states "service matters", in relation to persons subject to Army Act, the Navy Act and the Air Force Act means "all matters relating to the conditions of their* * "their", means all person subject to the Army Act, 1950, service", and then the second part says "and shall include -". In other words, "service matters" mean all matters relating to the conditions of service and thereafter the Legislatures in their wisdom have stated "and shall include", by way of inclusion of certain matters. In other words, what has been given in sub-clause (i), (ii) and (iii) of Section 3(o) is not exhaustive, but only inclusive of what has already been stated i.e. service matter means "all matters relating to the condition of their service". In other words, "service matters" as defined under the Armed Forces Tribunal Act, 2007 mean in relation to a person subject to the Army Act, the Navy Act or the Air Force Act "all matters relating to the conditions of his service" and only further includes such matters as have been stated in sub-clause (i), (ii) and (iii). Therefore merely because Section 3(o)(iii) speaks of a punishment of dismissal in a summary disposal and trial it does not mean that any other punishment besides "dismissal" if awarded in a summary disposal and trial is not cognizable by an Armed Forces Tribunal, as that would be a wrong appreciation of law and it emanates from a wrong appreciation of the definition clause of "service matters" in the Armed Forces Tribunal Act, 2007.*

21. *In other words, if the order dated 11.7.2011 passed by the learned Tribunal is to be a correct order then the only definition of "service matters" in the Act would be what has been given in (i), (ii) and (iii) and that the "service matter" also states that it means "all matters relating to the conditions of their service" has no meaning at all! The definition of subject matter does not start after the word "includes" but it is a wide inclusive definition stating, the "service matter" means "all matters relating to the conditions of their* service", and after having said that it includes what has been stated in (i), (ii) and (iii)....."*

- (37) Further, the said High Court went on to hold that it never had been the intention of the Legislature to create multiplicity of forums for a person subject to the Army, Navy or Air Force Act. The objects and reasons of the Act, 2007 clearly intended to vest the Tribunal with an exclusive jurisdiction to adjudicate upon all service matters of the members of the Armed Forces in the country for the reasons stated therein.
- (38) From perusal of the impugned judgment/order dated 10.08.2022 passed by the learned Tribunal, what we find is that the learned Tribunal, while passing the impugned judgment/order dated 10.08.2022, has premised its decision on the judgment passed by the Principal Bench of the learned Tribunal in the case of **Dfr. Shatrughan Singh Tomar (supra)**, wherein the Principal Bench of the learned Tribunal went to the extent of observing that the view taken by a Co-ordinate Bench of this Court in **Major Kunwar Ambreshwar Singh (supra)** is incorrect. The Tribunal after placing reliance upon the findings/decision of Principal Bench of the learned Tribunal in the case of **Dfr. Shatrughan Singh Tomar (supra)** in the manner as aforesaid, has returned a finding that since punishment of reduction in rank and deprivation of badges of good awarded in summary trial are not service matters in view of Section 3 (o) read with Clause (iii) of the Act, 2007, therefore, the learned Tribunal has no jurisdiction to try the original application and accordingly,

dismissed the original application being not maintainable vide judgment/order dated 10.08.2022.

(39) This Court finds that the aforesaid observation of the Tribunal was unwarranted and the same to be against Judicial proprietary and administration of Justice. Apparently, Article 141 of the Constitution of India provides that the law laid down by the Hon'ble Supreme Court is binding on all the Courts, authorities and Tribunals. It is equally true that there is no such provision in the Constitution in respect of the High Courts. However, by the judicial pronouncements, the Apex Court has laid down the law that similar power which is vested on the Apex Court by virtue of Article 141 of the Constitution is also available to the High Courts. In the case of **M/s. East India Commercial Co. Ltd. Calcutta and another v. Collector of Customs, Calcutta** : AIR 1962 SC 1893, the Apex Court has held as under :-

*"29.The division Bench of the High Court held that a contravention of a condition imposed by a licence issued under the Act is not an offence under S. 5 of the Act. This raises the question whether an administrative tribunal can ignore the law declared by the highest court in the State & initiate proceedings in direct violation of the law so declared. Under Art. 215, every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Under Art. 226, it has a plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority, including in appropriate cases any Government, within its territorial jurisdiction. Under Art. 227 it has jurisdiction over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. **It would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law***

declared by that court and start proceedings in direct violation of it.... We, therefore, hold that the law declared by the highest court in the State is binding on authorities or tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. If that be so, the notice issued by the authority signifying the launching of proceedings contrary to the law laid down by the High Court would be invalid and the proceedings themselves would be without jurisdiction."

(emphasis supplied)

- (40)** M/s. East India Commercial Co. (supra) has been quoted with approval by the Apex Court in the case of **Shri Baradakanta Mishra v. Shri Bhimsen Dixit** : AIR 1972 SC 2466, wherein the Apex Court has held as under:-

"14. Under Art. 227 of the Constitution, the High Court is vested with the power of superintendence over the courts and tribunals in the State. Acting as a quasi judicial authority under the Orissa Hindu Religious Endowments Act, the appellant was subject to the superintendence of the High Court.

Accordingly the decisions of the High Court were binding on him. He could not get away from them by adducing factually wrong and illegitimate reasons."

(emphasis supplied)

- (41)** In the case in hand, it has not been brought to the notice of the Court that ratio laid down by a Co-ordinate Bench of this Court in **Major Kunwar Ambreshwar Singh (supra)** has been challenged before the superior Court or the same has been set-aside by the superior Court. Therefore, the ratio laid down by a Co-ordinate Bench of this Court in **Major Kunwar**

Ambreshwar Singh (supra) holds good and as such is binding on the Tribunal. Thus, it was erroneous on the part of the Tribunal to observe in **Dfr. Shatrughan Singh Tomar (supra)** that the view of **Major Kunwar Ambreshwar Singh (supra)** is incorrect. Thus, the learned Tribunal, while passing the impugned judgment/order, fell in error by placing reliance upon the decision of the Principal Bench of the learned Tribunal in the case of **Dfr Shatrughan Singh Tomar (supra)**.

G. CONCLUSION

(42) For all the reasons recorded hereinabove, we are of the considered view that both the impugned judgments/orders dated 10.08.2022 and 06.10.2022 are liable to be set-aside in view of the observations made by this court in the preceding paragraphs. Additionally, this Court being bound by the decision rendered by a Co-ordinate Bench of this Court in **Major Kunwar Ambreshwar Singh (supra)**, would hold that the punishment of reduction in rank and deprivation of badges of good conduct awarded in summary trial are amenable to the Jurisdiction of the Armed Forces Tribunal and can be challenged before the Armed Forces Tribunal constituted under the Act of 2007.

(43) Accordingly, the writ petition is **allowed partly**. The impugned judgment/order dated 10.08.2022 passed in Original Application No. 276 of 2022 and the judgment/order dated 06.10.2022 passed in Review Application No. 86 of 2022 are

hereby set-aside and the matter is remanded to the Tribunal for deciding it afresh. We hope and trust that the learned Tribunal shall make an earnest endeavour to decide Original Application No. 276 of 2022 : LS : GI (s) *Abhishek Kumar (Retd.) Vs. Union of India and others*, on merits, in accordance with law, expeditiously.

(44) It is clarified that learned Tribunal shall not be guided with any observations made by this Court while passing the fresh final order on merits of the case and shall apply its independent mind for adjudication of the case.

(45) In the facts of the present case, there shall be no order as to costs.

(Om Prakash Shukla, J.) (Attau Rahman Masoodi, J.)

Order Date :- 30th November, 2023

Ajit/-