
R.N.R.

Before Mukul Mudgal, C.J. & Ajay Tewari, J.

COMMANDANT RTPS TULSI (RETD.),—Petitioner

versus

UNION OF INDIA AND OTHERS,—Respondents

CWP No. 7126 of 1996

21st September, 2010

Constitution of India, 1950—Art. 226—Armed Forces Tribunal Act, 2007—S. 15—PIL—Delay in disposal of cases of members of Armed Forces—Provisions of 2007 Act provide that Tribunals shall entertain cases in relation to appeal against any order, decision, finding or sentence passed by a court martial or any matter connected therewith or incidental thereto—High Court has no jurisdiction to entertain such cases—However, orders of punishment passed in pursuance to any proceedings before a Court Martial or its equivalent tribunal are entertained in High Court by treating such proceedings as criminal petitions.

Held, that this Court does not have any jurisdiction in view of the provisions of Section 15 of the Armed Forces Tribunal Act, 2007 to entertain the cases in respect of the members of the Armed Forces which are heard by the Tribunals. So far as cases relating to the petition challenging order of punishment passed in pursuance to any proceedings before a Court martial or its equivalent tribunal are concerned, the same are already being treated as Criminal Writ Petitions.

(Paras 3 & 4)

Vineet Soni, Advocate for *RTPS Tulsi, Advocate-petitioner in person.*

Ms. Reeta Kohli, Advocate, *for the respondents.*

MUKUL MUDGAL, C.J. (ORAL)

(1) This writ petition has been filed as PIL by the petitioner who retired as Commandant from Navy. This petition is largely based on the issue of delay in disposal of cases of the members of Armed forces as well as BSF etc. because of the reason that those are wrongly categorized as Civil Writ petitions which take years together for decision even in cases relating to Court Martial. Prayer made in the writ petition is as follows :—

“In view of the facts and circumstances stated above, it is most respectfully prayed that this Hon’ble Court may be graciously pleased to :

- (a) Pass an appropriate Writ, Order or Direction that members of the Armed Forces of the Union are a distinct class and required to be recognised as such under Rule 34 of the Writ Rules ;
- (b) Pass an appropriate writ, order of a direction that writs filed by the members of the Armed Forces challenging proceedings of Court Martial or its equivalent Tribunal be styled as “Criminal Writ Petition” under the Writ Rules and heard irrespective of the order in which they stand on the Register ;
- (c) Pass an appropriate Writ, order or a direction that Rules 3 and 4 of the Writ Rules are ultra vires of Ss. 108, 125, 126 etc. of Army Act, 1950 ; Ss. 64, 80, 81 etc. of BSF Act, 1968 and other corresponding provisions of the law relating to the Armed Forces as well as Arts. 14, 16, 21 and 226 of the Constitution ; and
- (d) Pass an appropriate, Writ order or a direction that all other Writs filed by the members of Armed Forces challenging action under the law relating to the Armed Forces may be treated as a special category and heard irrespective of the order in which they stand on the Register under the Writ Rules ; and

- (c) Pass any other Writ, order or a direction as may be considered appropriate in the circumstances of the case.”

(2) During the pendency of this Civil Writ Petition, The Armed Forces Tribunal Act, 2007 came into force. Section 15 of The Armed Forces Tribunal Act, 2007 deals with the jurisdiction, powers and authority in matters of appeal against court martial which reads as follows :—

“S. 15. Jurisdiction, powers and authority in matter 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 martial 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 appellent.

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 finding 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 fresh 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 ;
 - (iii) commute such punishment to any lesser punishment or punishments mentioned in the Army Act, 1950 or the Navy Act, 1957 or the Air Force Act, 1950, as the case may be ;
 - (c)
 - (d)
 - (e)
 - (f)
- (7)

(3) Thus, it is evident that this Court does not have any jurisdiction in view of the aforesaid provisions of The Armed Forces Tribunal Act, 2007 to entertain the cases in respect of the members of the Armed Forces which are heard by the Tribunals.

(4) So far as cases relating to the petition challenging order of punishment passed in pursuance to any proceedings before a court martial or its equivalent tribunal are concerned, the same are already being treated as Criminal Writ Petitions. Rule 3 of Chapter 4 Part F, High Court Rules and Orders Volume V dealing with such petition reads as under :—

“Rule 3. Criminal Writ Petitions.—A petition for the issuance of a Writ in the nature of habeas corpus or any petition challenging order of punishment passed in pursuance to any proceedings before a Court Martial or its equivalent tribunal shall be styled as “Criminal Writ Petition.”

(5) In view of the position explained above, this writ petition does not survive and stands disposed of.
