

APPLICATION No.O.A.No.34/2013

Lt. Col. Mukul Dev

Union of India & 3 Others

Legal practitioner for Respondents

Mr. Anand Bhandari

	<u>ORDERS OF THE TRIBUNAL</u>
	Order Serial Number: / Dated : 15.05.2013
	<p>Mr. Rajiv Manglik, learned counsel appears for the applicant. Mr. Anand Bhandari, learned counsel appears for the respondents and files his memo of appearance to that effect which may be kept with the records.</p> <p>The ibid OA (No. 34/2013) was taken up for hearing on the point of admission. Mr. Manglik presented the case that the applicant, Lt. Col. Mukul Dev, has challenged through this application against certain disciplinary entries which were alleged to have been made in his dossier for a summary trial which was supposed to have conducted in the year 2001 against the applicant. The applicant has challenged the existing entries in his dossier being illegal. Moreover, he submits through this application that because of the entries of the disciplinary award, his case for special review promotion to the rank of Colonel was effected which came to his knowledge only in April, 2013. He has thus prayed through this application to adjudicate the matter and remove all such illegal entries of ‘reprimand’ in his dossier.</p> <p>Mr. Anand Bhandari, learned counsel appearing for the respondents, however, raises some preliminary objections with regard to the admission of this application.</p> <p>Firstly, Mr. Bhandari brings to our notice the contents of Rule 6 of the Armed Forces Tribunal (Procedure) Rules, 2008 which reads as below:-</p>

*“6. **Place of filing application** . – (1) An application shall ordinarily be filed by the applicant with the Registrar of the Bench within whose jurisdiction –*

(i) The applicant is posted for the time being, or was last posted or attached; or

(ii) Where the cause of action, wholly or in part, has arisen;

Provided that with the leave of the Chairperson the application may be filed with the Registrar of the Principal Bench and subject to the orders under Section 14 or Section 15 of the Act, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter.

(2) Notwithstanding anything contained in sub-rule (1), a person who has ceased to be in service by reason of his retirement, dismissal, discharge, cashiering, release, removal, resignation or termination of service may, at his option, file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application.”

Mr. Bhandari submits that the spirit of giving an opportunity to the applicant to file an application in his last place of posting is primarily to benefit those who retired from service and is not meant for serving personnel as has been clarified in Rule 6(2). He further adds that had it been applicable to the serving personnel, then the word would have been as ‘previously posted’ and not the ‘last posted’” Moreover, as submitted by Bhandari, the applicant was posted in Kolkata and he has since been posted out at HQ, DG, NCC at New Delhi. Therefore, it would be appropriate for him to file this application at Delhi and there is no necessity for filing his application in Kolkata and accordingly, it is beyond the jurisdiction of this Tribunal to entertain this application because of his posting at New Delhi.

The second point that Mr. Bhandari raised is that the applicant was awarded reprimand on account of a summary trial that was conducted in the year 2001 against the applicant. According to Section 3(o)(iii) of the AFT Act, 2007, such punishment like reprimand awarded in summary trial are beyond the jurisdiction of this Tribunal.

Thirdly, Mr. Bhandari raises the issue bringing our attention to Section 21 of the AFT Act, 2007 for which the applicant should have exhausted all other remedies available like in this case he should have filed a statutory/non-statutory complaint before the competent authorities to seek redress before approaching this Tribunal on this point of time. It is not proper for him to express apprehension with the administrative authorities that they would not deal with his said statutory complaint expeditiously. Therefore, purely on this account, this application is not maintainable in this Tribunal. Mr. Bhandari summarizes his submission by insisting on these three points and praying that the application should be rejected at admission stage on the grounds as mentioned above.

Mr. Manglik contested the arguments put forth by Mr. Bhandari as under:

On the first issue, Mr. Manglik disagrees with the views and interpretation expressed by Mr. Bhandari and submitted that such a provision to file an application from the last place of posting especially for the serving soldiers is provided under Rule 6(1) of the AFT (Procedure) Rules, 2008 primarily to enable the soldiers to utilize the administrative facilities that was enjoyed in the last place of posting because in the Armed Forces, transfers are very frequent and there are remote places some of which are even not connected by rail or road including many difficult field areas. Therefore, for the ease of providing easy access to justice for the soldier in an easy manner such a provision has been provided in the Act and he is of the view that we must honour such a provision.

On the second issue, Mr. Manglik submits that he is fully aware of the provisions of Section 3(o)(iii) but at the same time he brings to our notice that this application is not meant against any punishment awarded by a summary trial but it is against an entry in the dossier of an officer which he considers as illegal because of lack of documentary support. As submitted by Mr. Manglik such an entry of reprimand should not have been entered into the dossier of the officer without proper authority which in case of Army is a proper Part II order.

Therefore he on the ibid account challenges this very entry in the dossier and does not question the veracity or legality of the summary trial per se. Therefore, the application should be treated as per the provisions of the AFT Act as 'service matter' where an applicant is denied promotion opportunity on the ground of punishment which has been illegally entered into the dossier.

On the third issue, Mr. Manglik submits that the applicant had quite a few experiences earlier wherein his statutory complaints have taken very long time extending to one year or even beyond that before he could get any relief. Therefore, on every occasion he had to knock the door of the Court to seek justice. Even here the OA No. 2/2013 was disposed of on 17.01.2013 giving two months time to the authorities to treat that OA as a statutory complaint and dispose the same accordingly. However, till date the said OA has not been disposed of and more than three months have since elapsed. He further added that the applicant is an officer of 1989 batch which is agreed by the respondents. Mr. Manglik submits that officers of 1992 batch and further junior to the applicant have already picked up the rank of Colonel; in addition the authorities have announced the promotion board for 1997 batch (8 years junior to the applicant) for promotion to the rank of Colonel in June, 2013. It is thus evident that his client is suffering since his juniors getting higher post because of his not getting promotion and it is delayed because of certain adverse entries in his dossier which are still under consideration. Therefore, Mr. Manglik prays that a very early disposal of this case should be done and the authorities be directed to hold his promotion board as quickly as possible so that his sufferings do not prolong any further.

We have heard the submissions of the learned counsel from both sides. We are of the view that this application is well within our jurisdiction in terms of rule 6(1) of the AFT (Procedure) Rules, 2008. We are also of the view that the question is not with regard to the summary trial but the question of jurisdiction is with regard to the alleged illegal entries in the applicant's dossier which is standing in the way of his promotion. Therefore, on that account adjudication of this

matter as the issue of jurisdiction will well be within the confines of the Act.

As regards the objection raised under Section 21 of the AFT Act, 2007, we are also of the view that it will not be appropriate for us to adjudicate this matter without affording opportunity to the proper administrative authorities to exercise their administrative jurisdiction to dispose of this matter as a statutory complaint. Notwithstanding that, we fully appreciate the sense of urgency and also the fact that the applicant is continuously being left out of promotion board because of some technical reasons or other that officers junior to him overtaking him in promotion. The authorities, therefore, must treat this issue with concern and urgency and dispose of the statutory complaint expeditiously. We have already been given to understand that OA No. 2/20013 filed by the same applicant was disposed of on 17.1.2013 with orders that the same be treated as a statutory complaint and disposed of within two months' time. Ld. advocate for the applicant, however, submitted that even that statutory complaint arising out of OA 2/2013 has not yet been disposed of. The authorities must dispose of the ibid statutory complaint without further delay, if not already done.

Under the circumstances, we feel it appropriate to direct the Union of India, i.e. the respondent No. 1 to treat this OA as a statutory complaint and dispose it of on merit as early as possible but not later than three months from this date positively. In case the authorities fail to dispose of this application after taking it as a statutory complaint by the due date, the matter will be taken up in this Tribunal in case, Mr. Manglik or the applicant is so advised. With such directions, the application is disposed of.

A plain copy of the order, countersigned by the Tribunal Officer, be given to the parties upon observance of usual formalities.

(Lt Gen K.P.D. Samanta)
Member (Administrative)

(Justice Raghunath Ray)
Member (Judicial)