

**IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
GUWAHATI**

**O.A. NO. 05 OF 2016.**

**PRESENT**

**HON`BLE MR. JUSTICE B.P.KATAKEY, MEMBER (J)**

**HON`BLE LT GEN SANJIV LANGER, MEMBER (A)**

**Ex-Hav/Clk Jayanta Boruah**

..... **Appellant/Petitioner**  
**Dr Gobind Lal**  
**Mr U Sarma**  
**Ms Rajeda Begum**  
**Ms U Zeeham**  
**Mr ANI Hussain**  
**Ms T.Buragohain ,**  
**Legal Practitioner**  
**for the petitioner.**

**-Versus-**

1. **The Union of India,**  
Represented by the Secretary,  
Government of India,  
Ministry of Defence MoD), South Block,  
New Delhi -110011.
2. **Chief of Army Staff,**  
Integrated Headquarters (IHQ) of MoD,  
(Army) South Block, New Delhi – 110011.
3. **The Director General of Medical Services (Army),**  
Adjutant General Branch,  
Integrated Headquarters of Ministry of Defence (Army),  
'M' Block, New Delhi – 110001.
4. **The Commanding Officer,**  
2006 Field Hospital,  
PIN – 904206 C/O 56 APO.
5. **Officer Commanding (O/C) Records,**  
Army Medical Corps Records (Manpower Section),  
PIN- 900450, C./O 56 APO.
6. **JC-699447P Naib Subedar ON Gupta,**  
Head Clerk, 2006 Field Hospital,  
PIN- 904206 C/O 56 APO,  
Now Subedar Clerk posted at  
Base Hospital Delhi Cantt.

..... **Respondents**

**Brig. N.Deka (Retd), CGSC.  
Legal Practitioner  
for the Respondents.**

Date of Hearing : 11.02.2016

Date of Judgment & Order : 11.02.2016

## **JUDGMENT & ORDER**

**(By B.P.Katakey,J.)**

Heard Dr. Gobind Lal, learned Counsel for the applicant and Brig. N.Deka, assisted by Col. Anand, OIC, AFT Legal Cell, Guwahati, appearing for the respondents.

2. The applicant has filed this O.A. praying for the following reliefs:

"8. Relief(s) sought:

It is humbly prayed that this Hon`ble Tribunal may graciously be pleased to consider the above and admit the instant application of the applicant, call for the records, issue notice to respondents for showing cause as to why the prayer of the applicant to set aside and quash the impugned discharge order dated 22.9.2014 (Annexure-6) releasing the applicant from service on 01.5.2015 based on illegal proceedings dated 05.8.2014 conducted by his CO in respect of the applicant under AR 22 and punishment awarded to him on the same day on the basis of his pleading guilty which in fact the applicant never pleaded and reinstate him in service with all consequential benefits for the ends of justice should not be allowed and after showing cause or causes by respondents and hearing both sides, be pleased to:-

8.1. To set aside and quash the impugned discharge order dated 22.9.2014 (Annexure-6) being based on illegal proceedings by CO in respect of the applicant under AR 22 and awarding punishment to him on the same day on the basis of suo motto recording his plea of guilty which in fact he never pleaded as well as red entry recorded in his service records on the basis of fabricated documents/records.

8.2. To direct the respondents to reinstate the applicant in service with all consequential benefits.

8.3. To award cost of the instant case; and

8.4. To grant any other relief or relieves as to this Hon`ble Tribunal may deem fit and proper in the facts and circumstances of the case."

3. Brig. N.Deka, learned Counsel appearing for the respondents has raised a preliminary objection relating to the maintainability of the O.A., contending *inter alia* that since the applicant has prayed for a relief based on the proceeding dated 5.8.2014 conducted by the CO awarding punishment in a summary disposal and trial, this Tribunal has no jurisdiction to entertain the OA in view of the definition of 'service matters' in Section 3(o) of the Armed Forces Tribunal Act, 2007. Learned Counsel, therefore, submits that the OA may be dismissed as this Tribunal has no jurisdiction to entertain the same.

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

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

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

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

"(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 allowance), 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;
- (v) '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);
- (vi) 'Tribunal' means the Armed Forces Tribunal established under section 4."

8. Clause (iii) of Section 3(o) of the Armed Forces Tribunal Act, 2007, provides that the 'service matter' includes the summary disposal and trial where the punishment of dismissal is awarded. In the instant case vide order dated 5.8.2014 the punishment of dismissal has not been awarded. The contention of the learned Counsel for the applicant that in view of the provision contained in Section 3(o)(iv), which empowers this Tribunal to entertain an OA in respect of 'any other matter, whatsoever', excluding the matters specifically mentioned in sub-clauses (i), (ii), (iii) and (iv) thereof, this OA is maintainable, can not be accepted for the simple reason that the term 'any other matter, whatsoever', is to be read with reference to the 'service matter', as defined in Section 3(o). The Tribunal can not give an interpretation that 'any other matter, whatsoever', includes all the matters concerning the service despite there being a specific provision that 'service matter', apart from others, includes only those summary disposal and trial where the punishment of dismissal is awarded. If a contrary interpretation is given, it would amount to extending the jurisdiction of the Tribunal beyond the 'service matter' as defined in Section 3(o) of the aforesaid Act and hence such interpretation cannot be given.

9. That being the position, we are of the considered opinion that since the relief claimed by the applicant is based on the order dated 5.8.2014 passed by the CO in a summary trial, whereby and whereunder the punishment of dismissal has not been awarded, this Tribunal has no jurisdiction to entertain the OA, as unless the order dated 5.8.2014 is interfered with, the applicant would not be entitled to any relief, as claimed.

10. The O.A. is, therefore, dismissed on the ground of jurisdiction.

11. It is, however, open to the applicant to approach the appropriate forum challenging the aforesaid order dated 5.8.2014.

12. No costs.

**MEMBER (A)**

**MEMBER (J)**

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