

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

**OA-13/2015**

**P R E S E N T**  
**HON'BLE MR.JUSTICE B.P.KATAKEY, MEMBER (J)**  
**HON'BLE AIR MARSHAL D.C.KUMARIA, MEMBER(A)**

JC 761181Y Sub (Master Tech 'B'veh)  
Sri Dilip Kumar Beborta, 1 Adv.Base Workshop,  
EME C/O.99 APO Pin 906401.

... **Applicant**

Mr. H.K.Das  
Ms.P.Dutta  
**Legal practitioner for Applicant**

-Versus-

1. The Union of India,  
Represented by the Secretary,  
Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of the Army Staff,  
Army Headquarters, South Block,  
DHQ PO New Delhi Pin 110011.
3. The Commanding Officer, 302,  
Lt.Regt. C/O. 99 APO
4. The Station Commander, Station  
Headquarters, Kancharapara Mil Stn.  
C/O. 99 APO
5. Col Anubhab Raj SM Commanding Officer  
302 Lt.Regt.LRW Pin 926303 C/o.99 APO

... **Respondents.**

**Mr.Nilutpal Baruah, CGSC**  
**Legal practitioner for Respondents**

Date of Hearing :- 01.03.2016

Date of  
Judgment & Order : **01.03.2016**

## **JUDGMENT & ORDER**

***(B.P.KATAKEY,J)***

Heard Mr. H.K.Das ,learned counsel appearing for the applicant. Also heard Mr.N.Baruah, learned CGSC assisted by Maj Dibakar and Col Anand appearing for the respondents.

[2] The applicant has filed the present OA challenging the order dated 28.10.2014 severely reprimanding him in the Summary disposal and trial by the Commanding Officer,302 Lt Regt. C/o. 99 APO.; the notice dated 20.10.2015 issued to the applicant intimating him that the punishment of severe reprimand has been awarded to him under section 45 of the Army Act.,1950 and consequently to discharge him from service w.e.f. 31.1.2015 (afternoon) on completion of normal tenure of 28 years of service and the order dated 23.01.2015 passed by the Senior Record Officer for OIC EME Records, discharging the applicant on completion of normal tenure w.e.f. 31.01.2015, which has the effect of cancellation of the order of extension of service , on the ground of his severe reprimand in the Summary disposal and Trials on 28.10.2014.

[3] The Respondents, in their counter affidavit filed, has taken a preliminary objection relating to maintainability of the instant OA before this Tribunal, in view of the definition of 'service matters' in Section 3(O) of the Armed Forces Tribunal Act, 2007 ( hereinafter referred to as Act. 2007), contending, inter alia, that since the basis for passing the ultimate impugned order dated 23.01.2015 is the punishment of severe reprimand awarded to the applicant in Summary disposal and Trial, this Tribunal has no jurisdiction as the definition of 'service matters' includes only summary disposal and trial where the punishment of dismissal is

awarded. Another, preliminary objection has also been taken to the effect that the applicant has not availed the efficacious alternative remedy available to him under section 26 of the Army Act. 1950, before approaching this Tribunal.

[4] Mr. Das, learned counsel appearing for the applicant, referring to the definition of 'service matters' as defined in section 3(o) of Act. 2007 has submitted that since the matters which are excluded from the purview of this Tribunal, has specifically been mentioned in clauses (i) to (iv) of Section 3(o)(iv) of the said Act, this Tribunal has jurisdiction to entertain this OA, despite the fact that the punishment of dismissal has not been awarded in the summary disposal and trial. It has also been submitted that it is not a fact that the applicant has not availed alternative remedy i.e. filing of the statutory complaint as required under section 26 of the Army Act 1950, as the applicant being aggrieved by the order of discharge as well the order of severe reprimand has filed a statutory complaint before the Chief of the Army Staff on 28.01.2015, which has not been disposed of.

[5] Per contra, Mr. N.Baruah, learned CGSC appearing for the respondents referring to the definition of 'service matters' as defined section 3(o) of the 2007 Act., has submitted that since the order of discharge dated 23.01.2015 is based on punishment of severe reprimand awarded to the applicant in the summary disposal and trial by the Commanding Officer, this Tribunal has no jurisdiction to entertain the OA, punishment awarded not being dismissal. It has also been submitted that the term 'any other matter, whatsoever' in Section 3(o)(iv) of the Act. 2007 cannot be extended to include any punishment awarded in summary disposal and trial since the jurisdiction of this Tribunal has been conferred to entertain the OA only in respect of summary disposal and trial where the punishment of dismissal is awarded. Mr. Baruah, learned CGSC referring to the

complaint dated 28.01.2015 filed by the applicant , which is available in Annexure -32 of the OA, has submitted that it is apparent therefrom that the said complaint was not filed through proper channel and was also not in the format prescribed. Mr.Baruah in support of his contention has relied on the decision of this Tribunal dated 11.02.2016 passed in OA 05/2016 (Ex Hav/Clk Jayanta Boruah Vs. Union of India and ors).

[6] It is evident from the pleadings in the OA, including the complaint dated 28.01.2015 (Annexure -32 to the OA), that the applicant has immediately after passing of the release order dated 25.01.2015, filed a statutory complaint addressed to the Chief of the Army Staff whereby and whereunder he has also challenged the order passed in the summary disposal and trial awarding the punishment of severe reprimand. No doubt, the said statutory complaint, has not been filed through proper channel.

[7] Since the statutory complaint has been filed before the Chief of the Army Staff , we are of the view that despite not filing the same through proper channel, it is required to be considered by the Chief of the Army Staff in accordance with law and having regard to the contention of the applicant and upon seeking the comments or feedback from the other concerned authorities.

[8] In view of the above, without going to the question of jurisdiction of this tribunal, as raised by the respondents, we dispose of the OA directing the Chief of the Army Staff to consider the said statutory complaint dated 28.1.2015 in accordance with law and upon obtaining comments /feedback from the other concerned authorities. The decision on the statutory complaint shall be taken within the outer limit of 6 months as stipulated in Sub Para 'k' of para 364 of

Regulations for the Army, 1987. Needless to say, the order that may be passed by the Chief of the Army Staff shall immediately be communicated to the applicant so that he can approach the appropriate forum, if he still has any grievance.

[9] The Original Application is accordingly disposed of. No costs

**MEMBER (A)**

**MEMBER (J)**

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