

IN THE ARMED FORCES TRIBUNAL

REGIONAL BENCH, GUWAHATI

OA- 21/2017

JC E /380052A Subedar(Building & Road)
Shri Gautam Chakraborty of Headquarters 9
Sector Assam Rifles attached to Headquarters 7 Sector
Assam Rifles and
S/O. Late Surendra Kumar Chakraborty
C/O. Jail Superintendent,
District Jail Tuensang, Tuensang, Nagaland.

..... Applicant.

By legal practitioners for
Applicant.

Mr. A.M.Bora
Mr. Atal Tewari

-VERSUS-

1. Union of India,
Represented by the Secretary,
Govt. of India, Ministry of Defence
Sena Bhawan, New Delhi – 110011.
2. The Director General of Assam Rifles
Directorate General of Assam Rifles
Laitkor Shillong -10 Meghalaya.
3. The Inspector General of Assam Rifles (North)
C/o. 99 APO.
4. The Inspector General of Assam Rifles (East)
C/O. 99 APO
5. The Sector Commander
HQ 7 Sector Assam Rifles,
C/O. 99 APO
6. The Sector Commander
Hq 6 Sector Assam Rifles C/O. 99 APO
7. The Col Ops & Cord
Ex Official Commandant
HQ 7 Sector, Assam Rifles, C/o. 99 APO
8. IC 65988M Maj Deepak Bayala
Recording officer SOE
Hq 7 Sector, Assam Rifles, C/O. 99 APO
9. IC 7343H Maj Gourav Verma
Law Officer GARC HQ 7 Sector
Assam Rifles, C/O. 99 APO

..... Respondents..

By Legal Practitioner for the

Respondents
Mr.N.Baruah CGSC

PRESENT

HON`BLE MR. JUSTICE B.P.KATAKEY, MEMBER(J)
HON`BLE VICE ADMIRAL MP MURALIDHARAN, MEMBER (A)

Date of Hearing : 07.06.2017

Date of Order : 08 .06.2017

ORDER

(Justice B.P.Katakey,)

The applicant, who is subject to the Assam Rifles Act 2006, has filed this application challenging the proceedings of General Assam Rifles Court and sentence awarded on 18.08.2016 to suffer rigorous imprisonment for 5 years and dismissal from service, basically contending that the said proceeding is without jurisdiction as under the provisions of the Assam Rifles Act 2006 (in short Act 2006), General Assam Rifles Court cannot try the personnel subject to the said Act for the offence punishable under the Prevention of Corruption Act 1988.(in short PCA 1988)

[2] We have heard Mr.A.M.Bora, learned Senior counsel appearing for the applicant and Mr. N.Baruah, learned CGSC appearing for the respondents.

[3] On 22.05.2017, upon hearing the learned Sr. Counsel appearing for the applicant, notice was issued on the question of jurisdiction of this Tribunal to entertain the OA and accordingly, we have heard the learned counsel appearing for the parties as to whether this Tribunal has jurisdiction to entertain the OA under the provisions of the Armed Forces Tribunal Act, 2007 (in short 2007 Act).

[4] Mr. Borah, learned Senior counsel appearing for the applicant referring to Section 4 of the Army Act 1950 (in short 1950 Act) as well as SRO 117 dated 28.03.1960, SRO 318 dated 6.12.1962, as amended by SRO 325 dated 31.08.1977 has submitted that since the Govt. of India in exercise of the power conferred by Section 4

of the 1950 Act has made applicable the provisions of the said Act to the Assam Rifles personnel, this Tribunal has jurisdiction to entertain the OA, more so, when a person subject to the Act 2006 can not be tried for the offence committed under the PCA 1988, which can only be done under the 1950 Act. The learned counsel, therefore, submits that despite the enactment of 2006 Act, the provisions of 1950 Act will continue to apply to the applicant, since the applicant was charged and tried for the offence committed under the provisions of PCA 1988. The learned counsel in support of his contention has placed reliance on the judgment passed by the Hon'ble Supreme Court in **Union of India and Ors vs. Dinesh Prasad** reported in **(2012) 12 SCC 63**.

[5] Mr N. Baruah, learned CGSC appearing for the respondents, on the other hand, referring to the charge sheet issued and also the proceedings of the General Assam Rifles Court, which is put to challenge in the present application, has submitted that it is apparent that the applicant was charged- sheeted under the 2006 Act, who is subject to said Act and the punishment was awarded under the provisions of the said act and hence by virtue of section 14 read with Section 3(o) of the 2007 Act, this Tribunal has no jurisdiction to entertain the present OA, the applicant being not subject to the provisions of 1950 Act. The learned counsel also submits that the notification issued by the Govt. of India under section 4 of the 1950 Act ceased to operate on enactment of 2006 Act. It has also been submitted that the decision of the Hon'ble Supreme Court in **Dinesh Prasad** (supra) is not applicable in the present case as the respondent therein (Dinesh Prasad) was subject to Army Act, in view of the notification issued by the Govt. of India under section 4 of the 1950 Act, who was tried under the provision of the said Act, before promulgation of 2006 Act. The learned counsel referring to the order passed by the Hon'ble Gauhati High Court, Kohima Bench in WP(C) No. 71(K)/2016 filed by the applicant has submitted that the applicant in the said writ petition has admitted that he is subject to 2006 Act and the rules framed thereunder.

[6] We have considered the submission advanced by the learned counsel appearing for the parties on the question of jurisdiction of this Tribunal to entertain the OA.

[7] Section 14 of 2007 Act provides that *the Tribunal shall exercise , on and from the appointed day, all the jurisdiction, power and authority ,exercisable immediately before that day by all courts (except Supreme Court or a High Court exercising jurisdiction under Article 226 and 227 of the Constitution) in relation to all service matters.*

[8] The term ' service matter' is defined in Section 3(O) of the 2007 Act as follows :

" 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 mater, whatrsoever

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) transfer and postings including the change of place or unit on posting whether individually or as a part of the 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 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 disposal and trials' means summary disposals and trails 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."

[9] This Tribunal, therefore, can entertain an application in relation to the persons who are either subject to 1950 Act or Navy Act 1957 or Air Force Act 1950 and no other Act.

[10] The applicant in the present OA is admittedly subject to 2006 Act. The charges were framed against the applicant under the provisions of the said Act. He was tried by General Assam Rifles Court and was sentenced as aforesaid under the provisions of the said Act. The applicant was never tried under the provisions of 1950 Act. The contention of the applicant that in view of the notification issued by the Govt. of India in exercise of the power conferred by section 4 of 1950 Act applying the provisions of 1950 Act to Assam Rifles personnel, the provisions of the 1950 Act will continue to apply even after enactment of the 2006 Act, cannot be accepted as those notifications issued under section 4 of 1950 Act remained in force till 2006 Act was enacted and came into force. It is altogether a different question whether under the provisions of 2006 Act General Assam Rifles Court has jurisdiction to try its personnel for the offence committed under the provisions of PCA 1988.

[11] The decision of the Hon'ble Supreme Court in **Dinesh Prasad** (supra), on which reliance has been placed by the learned Senior Counsel for the applicant, is not applicable in the facts and circumstances of the present case as the respondent therein (Dinesh Prasad) though was a personnel of Assam Rifles, was prosecuted under the provisions of 1950 Act, by virtue of the notification issued by the Govt of India under section 4 of the said Act applying the provisions of 1950 Act to the personnel of Assam Rifles, prior to enactment of 2006 Act.

[12] The applicant being not subject to 1950 Act and admittedly subject to 2006 Act, this Tribunal cannot entertain the OA filed by the applicant challenging the proceedings of General Assam Rifles Court and sentence imposed by it. It is open to the applicant to

challenge the said proceedings and sentence before the appropriate forum, if so advised.

[13] OA is accordingly dismissed on the ground of jurisdiction.

[14] No costs.

MEMBER (A)

MEMBER (J)

Mc

