2024:PHHC:147591-DB

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CRWP-275-2024 (O & M)
Reserved on: 24.09.2024
Pronounced on: 12.11.2024

Colonel Jagpreet Singh Bakshi and Another .....Petitioners

Versus

Union of India and Others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. Rajesh Sehgal, Advocate
Mr. Arun Singla, Advocate and
Mr. Navdeep Singh, Advocate
for the petitioners.

Mr. Rohit Verma, Senior Panel Counsel
for the respondents – UOI.

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SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioners herein prays for setting aside of the order dated 13.12.2023 (Annexure P-6) as passed by the learned Armed Forces Tribunal concerned (hereinafter for short called as the AFT), wherebys, the O.A. filed by the petitioners has been dismissed on the grounds of maintainability as well as on merits.

Factual Background

2. The petitioners both serving as Army Officers were alleged to have committed certain irregularities in the tendering process in August, 2018, which resulted in the convening of Court of Inquiry. Owing to certain administrative reasons, the said Court of Inquiry could

not assemble and thus vide order dated 19.07.2019, a fresh Court of Inquiry was ordered. The said Court of Inquiry gave its findings on 25.09.2019, whereby the applicants were held blameworthy for certain procedural lapses and financial irregularities. The said Court of Inquiry was submitted on 28.09.2019 to the HQ 11 Corps. The General Commanding 11 Corps, perused the same and issued directions dated 24.02.2020 for initiation of disciplinary proceedings against the applicants. Further, the said Court of Inquiry was challenged before the Principal Bench vide OA No. 1175 of 2020 and vide order dated 28.11.2020 passed by the AFT concerned, the said Court of Inquiry was set aside. Thereafter, another Court of Inquiry was ordered on 01.01.2021. The said Court of Inquiry was cancelled owing to administrative reasons.

3. Thereafter, vide order dated 06.01.2021 another Court of Inquiry was convened. On completion of the said Court of Inquiry, the findings as became recorded thereins were submitted before the competent authority. On the basis of the said Court of Inquiry, directions dated 16.09.2021 were issued by the competent authority viz. General Officer Commanding 11 Corps, that disciplinary action be initiated against the applicants. Accordingly, summary of evidence was recorded and charge-sheet dated 03.01.2023 was issued under Section 52 (f) of the Army Act, 1950. Vide order dated 06.01.2023, a General Court Martial was convened and assembled on 14.01.2023 for trial of the applicants.

4. On behalf of the applicants, a plea that the bar of limitation is attracted though became raised. However, the same was rejected vide order dated 13.05.2023.

5. Feeling aggrieved, the petitioners filed O.A. No. 862 of 2023 under Sections 14 and 15 of the Armed Forces Tribunal Act, 2007 (hereinafter for short called as the Act), challenging the afore rejection order. The said O.A. became dismissed vide order dated 13.12.2023, on the ground qua the same being non maintainable. Further, the AFT concerned dismissed the same on merits also.

Submissions of the learned counsel for the petitioners.

6. The learned counsel for the petitioners submit that the learned AFT after reaching a conclusion on the O.A. (supra) as became laid before it, qua the same being not maintainable, yet has untenably proceeded to pronounce an order on merits. Therefore, it is contended that the making of a decision on the merits of the *lis,* rather was required to be done by the competent authority, than by the learned AFT concerned. As such, it is contended that the entering into the merits of the *lis* and also the makings of a decision thereons, has also resulted in a grave prejudice becoming visited upon the present petitioners, to the extent that therebys the present petitioners would be estopped to, before the Competent Authority, thus contest the *lis* on merits.

Inferences of this Court.

7. The sum and substance of the said submission, is that, the learned AFT after declaring the petition to be premature and thus

concomitantly declaring it to be also not maintainable, has yet proceeded to decide the O.A., on merits, wherebys, the apposite findings recorded by the Court of Inquiry, thus become upheld. Resultantly therebys the present petitioners, in case they assumingly convince the Court of Inquiry, about the validity of their espousal, whereupon, the Court of Inquiry may proceed to not confirm the preliminary Inquiry Report. However, through the making of a decision on the merits of the *lis*, evidently the petitioners become barred to effectively contest the *lis* on merits before the Court of Inquiry, therebys, the petitioners naturally became condemned unheard and/or therebys the confirming authority rather would become presented with a *fiat accompli*. The said was required to be obviated by the learned AFT concerned. Consequently, the makings of a decision on the merits of the *lis,* naturally is a sequel of gross non application of mind besides becomes ridden with a gross material impropriety. Moreover, the vice of illegality also becomes ingrained in the decision on merits, as became recorded on the *lis* (supra).

8. **For the reasons to be assigned hereinafter, the decision recorded on the Original Application, thus by the learned AFT, after an interpretation being made of the provisions carried in Section 15 of the Act, is quashed and set aside and the *lis* is remanded to the learned AFT for a fresh decision on merits.**

9. Since this Court declares the O.A., to be maintainable, therebys the consequent effect thereof, is that, the decision on merits of

lis, is also required to be re-made by the learned AFT concerned. The reason for concluding so, but irrespective of what has been stated (supra), is that, once jurisdictional competence vested in the learned AFT, to within the ambit of Sub Section (1) of Section 15 of the Act, thus make a decision qua validity of the preliminary findings, as become recorded by the Court of Inquiry. Therefore, for the able exercisings of the said vested statutory jurisdictional competence in the learned AFT concerned, thus the latter is required to be re-visiting even the merits of the *lis*. Furthermore, therebys there would be no supra inter-se conflict inter-se the inference, that once the O.A., has been declared to be not maintainable, therebys, there was no requirement for the learned AFT concerned, thus to either enter into the merits of the *lis* or to make a decision thereons.

10. For fully understanding the controversy at hand, it is necessary to extract the provisions embodied in Section 15 of the Act, provisions whereof are extracted hereinafter.

15. Jurisdiction, powers and authority in matters 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 material 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 appellant:

Provided that no order dismissing the appeal by the Tribunal shall be passed unless such order is made after recording reasons therefore 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 findings 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 afresh for the offence specified or involved in such findings under the provisions of the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 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 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), as the case may be;

(c) enhance the sentence awarded by a court martial:

Provided that no such sentence shall be enhanced unless the appellant has been given an opportunity of being heard;

(d) release the appellant, if sentenced to imprisonment, on parole with or without conditions;

(e) suspend a sentence of imprisonment;

(f) pass any other order as it may think appropriate.

(7) Notwithstanding any other provisions in this Act, for the purposes of this section, the Tribunal shall be deemed to be a criminal court for the purposes of sections 175, 178, 179, 180, 193, 195, 196 or 228 of the Indian Penal Code (45 of 1860) and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)

11. The provisions embodied in sub section (1) of Section 15 of the Act are relevant for deciding the instant controversy. Importantly, an interpretation is required to be imparted to the statutory expressions "***any order, decision, finding or sentence passed by a court martial or any matter connected therewith or incidental thereto***", as become carried thereins. The learned AFT concerned after making an interpretation of the above statutory expressions, as exist in the provisions (supra), ultimately concluded, but after alluding to the provisions embodied in Section 153 of the Army Act, provisions whereof also become extracted hereinafter, that since the provisions embodied in Section 153 (supra) echo, that unless a confirmation order is made in respect of any finding or in respect of awarding any sentence by the general, district or summary general, court martial, thereupon, the appositely rendered incriminatory finding or the sentence awarded rather shall be invalid, qua therebys the O.A., being not maintainable rather for wants of makings of an apposite confirmation order.

> ***"153. Finding and sentence not valid, unless confirmed – No finding or sentence of a general, district or summary general, court-martial shall be valid except so far as it may be confirmed as provided by this Act."***

12. Resultantly it was concluded that uptos, the makings of an order of confirmation by the competent authority in respect of the sentence awarded or finding recorded, thus the aggrieved becomes barred to access the AFT concerned.

13. The interpretation (supra) made by the AFT concerned, on a combined and conjunct reading being made to the expression (supra) as occur in the Sub Section (1) of Section 15 of the Act, with the provisions engrafted in Section 153 of the Army Act, but arises from a lack of a complete incisive and in depth understanding of the provisions (supra).

14. The reason for this Court contrarily assigning to the expressions "***any order, decision, finding or sentence passed by a court martial or any matter connected therewith or incidental thereto***" as exist in the provisions (supra), that therebys there is conferment of jurisdiction in the AFT, to entertain a petition against any order decision, finding or sentence passed by a court martial or any matter connected therewith or incidental thereto, thus inter alia ensues on the following grounds.

a) The jurisdiction conferred thereunders vis-à-vis the AFT concerned, especially when the AFT is a specially created judicial body, thus is for determining the disputes relating to the personnel, who serve respectively in the Army, Navy or Air Force. Therefore, therebys

rather a plenitude of competent jurisdiction becomes ably conferred vis-à-vis the AFT concerned. The expanse of the jurisdiction conferred vis-à-vis the Armed Forces Tribunals concerned, when becomes so amply endowed, through the swathe of the expression "***any order, decision, finding or sentence passed by a court martial or any matter connected therewith or incidental thereto***", which plain speakingly is but of a plenitude genre. Necessarily, therebys the said expressions invest an able jurisdiction in the AFT, to entertain, thus any motion laid in the prescribed form, which becomes directed against any order, decision finding or sentence passed by a court martial or any matter connected therewith or incidental thereto.

b) Moreover, the said provisions are also required to be read in conjunction with Sub Section (2) of Section 15, whereins, it becomes explicitly expressed that, an aggrieved from an order, decision, finding or sentence passed by a court martial, becomes endowed the privilege to prefer an appeal in the form of an O.A., becoming constituted before the AFT concerned. Obviously even the supra provision became ably recoursed by the present petitioner, as the O.A., was constituted in a proper prescribed form.

c) Now in case the legislature intended to curb the plenitude or the swathe of the able jurisdiction conferred upon the AFT, through the expressions (supra), as exist respectively in Sub Section (1) and in Sub Section (2) of Section 15 of the Act, therebys a specific statutory provision was also required to be also incorporated in the

apposite special statute. However, since no special statutory provision exists in the special statute (supra) wherebys becomes restricted, rather the plenitude or the swathe of the jurisdiction conferred upon the AFT concerned, as imminently emerges, from the width of the expression(s) (supra), which but covers also any order, decision, finding or sentence passed by a court martial or any matter connected therewith or incidental thereto. Therefore, it is to be concluded that the provisions incorporated in Section 153 of the Army Act, which state that *unless confirmation order is made in respect of an awarding of any sentence by the general, district or summary general, court martial thereupon, the incriminatory finding or the sentence awarded shall be invalid,* are to be construed to be neither restricting nor curtailing the jurisdiction (supra) conferred in the AFT concerned. Contrarily, the (supra) provisions existing in the Army Act are to succumb and/or to become construed to become bridled by the swathe of the jurisdiction conferred upon the AFT concerned.

15. However, yet when this Court for reasons (supra) has stated that the said decision on merits, was to be made only after the petition becoming declared to be maintainable. Contrarily, when even after the petition becoming declared as non maintainable, thus the learned Tribunal yet has proceeded to make a decision on the merits of the *lis,* which is but adversarial to the present petitioners. However, when this Court has declared the O.A., to be maintainable, therebys a

fresh decision on the merits of the *lis*, is required to be made upon the O.A.

Final Order of this Court.

16. In aftermath, the writ petition is allowed. The impugned order dated 13.12.2023 (Annexure P-6) is quashed and set aside. The *lis* is remanded to the AFT concerned for the making of a fresh decision thereons, even on merits. The said re-decision on merits shall be made by the Bench of the AFT concerned, without its becoming influenced by the earlier made decision on the merits of the *lis*.

17. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

12.11.2024
kavneet singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No