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Role of Armed Forces Tribunal

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Abstract

Armed Forces Tribunal in the administration of military justice in India. It analyzes the jurisdiction, powers, and functions of the Tribunal and evaluates its contribution to protecting the legal rights of service personnel. The study also explores how the Tribunal balances the requirements of military discipline with the principles of natural justice, fairness, and constitutional governance. Particular attention is given to the Tribunal's role in reviewing service matters, court-martial decisions, and disciplinary actions within the armed forces.

The research further assesses the effectiveness of the Tribunal through an examination of judicial decisions, legislative provisions, and practical challenges affecting its functioning. It highlights issues such as delays in appointments, limitations in enforcement of decisions, and concerns regarding access to justice. The study concludes that while the Armed Forces Tribunal has strengthened the military justice system by providing specialized adjudication and enhancing accountability, certain reforms are necessary to improve its efficiency and ensure greater protection of the rights of armed forces personnel. The Tribunal remains a vital institution in promoting justice, discipline, and the rule of law within the armed forces of India.

Keyword: Armed Forces, Tribunal, Supreme Court, Cases

Introduction

The Armed Forces Tribunal has been constituted under the Armed Forces Tribunal Act, 2007 for the adjudication of complaints and disputes regarding service matters and appeals arising out of the verdicts of the courts-martial of the members of the three services (Army, Air Force and Navy) to provide for quick and less expensive justice to the members of the Armed Forces. The Act created the Armed Forces Tribunal, a semi-civilian appellate court, as a check on the operation of military justice.

A defendant's right to appeal from a criminal conviction is an international human rights norm. The subtext of separate Military Justice Systems is that they are meant to give special treatment to those who give their lives for their country. According to United Nations Special Reporter's on the independence of judges and lawyers, Military Justice

Systems are not integral to civilian systems, but are instead parallel to them^[1].

A large number of cases relating to service of the members of the three-Armed Forces of the union of India were pending in the courts for a long time. The question of constituting an independent adjudicatory forum for the defence personnel had been engaging the attention of the Central Government for quite some time. In 1982, the Supreme Court had asked the Central Government to take steps to provide for at least one judicial review in service matters. In 1992, the Estimate Committee of Parliament in their 19th report had desired that the Government should constitute an independent statutory board or tribunal for service personnel. The existing system of administration of justice in the Armed Forces provides for submission of statutory complaints against grievances relating to service

1 Global Seminar on Military Justice Reform, available at: www.responsesystemspanel.mil (last visited on August 06, 2025).

matters and pre and post confirmation petitions to various authorities against the findings and sentences of courts-martial.

All pending cases of army, air force and navy have been transferred to the Armed Forces Tribunals. The tribunal is not restricted by Code of Civil Procedure, but guided by concept of natural justice. A further appeal against the decision of the tribunal can be made only to the Supreme Court. The Armed Forces Tribunal fulfilled a long felt need of the country's three defence services. It would also make the Armed Forces more lucrative.

The Armed Forces Tribunal have in all fairness given the Armed Forces personnel the right for further appeal, but it is more effective when the Military Justice System from the first step have both the subjective element and objective element established by law. Judiciary is the third pillar of Indian Constitution and Armed Forces Tribunal is one of its wings.

History

The court-martial system in India is the legacy of the English legal system. While the Law Commission of India in its 125th report examined in detail the problems confronting our judiciary, suitable action is yet to be taken to correct the centuries old judicial system in our Armed Forces. In contrast, in England, two committees the Lewis Committee and Army and Air Force Court-Martial Committee were appointed to consider the administration of justice under the Naval Discipline Act, 1949 vigorously recommended the transformation of Military Justice System. Their recommendations led to the establishment of an independent judiciary ^[2], i.e. Court-Martial Appellate Court. Such an appellate court in India is yet to be setup despite *obiter dictum* by the Supreme Court in the case of *Prithipal Singh Bedi v. Union of India* ^[3], pointing out a glaring deficiency in the Army Act, viz the absence of the remedy of appeal against the orders of courtmartial. The Supreme Court also pointed out the changes brought about by the United Kingdom and United States of America in the Military Justice System and observed that Parliament should pass similar legislation consistent with the changed valued system. Reluctance of the Apex Court more concerned with civil law to interference with the internal affairs of the army is likely to create a distorted picture in the minds of the military personnel that persons subject to the Army Act are not citizens of India. It is one of the cardinal features of our Constitution that a person by enlisting in or entering the Armed Forces does not cease to be a citizen so as to wholly deprive him of his rights under the Constitution.

The Supreme Court held in the case of *Sunil Batra v. Delhi Administration* ^[4], that even prisoners deprived of personal liberty are not wholly denuded of their fundamental rights. In the larger interest of national security and military discipline, Parliament in its wisdom may restrict or abrogate such rights in their appreciation to the Armed Forces but this process should not be carried so far as to create a class of citizens not entitled to the benefits of the liberal spirit of the Constitution. Persons subject to the Armed Forces are citizens of this ancient land having a feeling of belonging to the civilised community governed by the liberty-oriented Constitution. A

marked difference in the procedure for trial of an offence by the criminal court and court-martial is apt to generate dissatisfaction arising out of this differential treatment. It is pointed out that the procedure of trial by a court-martial is almost analogous to the procedure of trial in the ordinary criminal courts. The expression 'court-martial' generally strikes terror in the heart of the persons to be tried by it.

The Military Justice System in most countries was created to give authority to the commander-in-chief as an essential means of winning wars and punishing those who disobeyed him. It was considered essential for maintaining a disciplined force. Not until 1951 did a soldier convicted by a court-martial have the right to appeal to any civilian court of appeal ^[5]. The only way in which a civilian court could consider the findings of a courtmartial was by way of the prerogative writs of certiorari, prohibition and mandamus.

Courts-Martial are typically *ad-hoc* bodies appointed by a military officer among his subordinates. Conceding to military personnel that high degree of honesty and sense of justice which nearly all of them undoubtedly have, the members of a court-martial, in the nature of things, do not and cannot have the independence of jurors drawn from the general public or of civilian judges. The court has power of *inter-alia*, to order the production of documents or exhibits connected with the proceedings, order the attendance of witnesses, receive evidence, obtain reports and the like from the members of courts-martial or the persons who acted as judge advocate, order a reference of any question to a special commissioner for enquiry and appoint a person with special expert knowledge to act as an assessor. The appellate court has the power of full judicial review unhampered by any procedural clasp.

The Law Commission identified this area, which was in need of immediate action. The commission suggested that it was necessary to create a service tribunal for Armed Forces more or less on the pattern of administrative tribunals created under the Administrative Tribunals Act, 1985 except for the fact that the proposal contemplated a direct statutory appeal to the Supreme Court ^[6]. Its object is also to provide quicker and less expensive justice to the members of Armed Forces. The case of *L. Chandra Kumar v. Union of India* ^[7] was related to the Central Administrative Tribunal, which was established by an Act of Parliament. In this case the Supreme Court said that the powers of the High Courts under Articles 226 and 227 cannot be taken away by an Act of Parliament.

In any progressive system, right to appeal is recognised because there is always a scope of perverse verdict or a decision based on error, either of fact or law. A soldier convicted by a court-martial does not have a right to appeal to any civilian court of appeals. Armed Forces authorities are considered the best judge of the quantum of punishment that ought to be imposed. Under the writ jurisdiction, the civil courts have a very limited authority to interfere with the findings of courts-martial, especially when the Constitution of India clearly spells out that the High Courts do not have power of superintendence over the tribunal constituted by the Armed Forces under Article 227 (4) of the Constitution ^[8]. There have been reforms in the Military Justice Systems in other countries. The United States of America, United

2 Maj. Gen. Nilendra Kumar, Military law then, now and beyond 197 (Judge Advocate General's Department, New Delhi, 2005).

3 AIR 1982 SC 1413.

4 AIR 1980 SC 1579.

5 U. C. Jha, The Military Justice System in India: An Analysis 257 (Lexis Nexis, Butterworths Wadhwa, Nagpur, 2009).

6 Law Commission of India, 169th Report on Amendment of Army, Navy and Air Force Acts 9 (April 1999).

7 AIR 1997 SC 1125.

8 Supra note 6 at 1.

Kingdom, Canada etc. have independent judiciary for the military personnel since the independence of judiciary is a cardinal principle of the Constitution.

The concept of Armed Forces Tribunal was very much in existence right from the day the Constitution of India came into force. But it appears that it escaped the notice of the legislature till they were made aware of it. At the time of enactment of the Army Act and the Air Force Act in 1950, though the Parliament did debate the need for an appellate court, it provided for an inhouse non-judicial review of courts-martial proceedings by way of preconfirmation and post-confirmation petitions. In 1954, the Judge Advocate General mooted a proposal for setting up a review board to hear appeals against courts-martial verdicts, which were turned down. In 1957, when the Navy Act was passed by Parliament, a provision was incorporated for a mandatory judicial review by the Judge Advocate General, with opportunity of personal hearing to the accused or his counsel. The Standing Committee on Defence (2004-2005) understands that the Army Act, the Air Force Act and the Navy Act like have originated from the related Acts enacted during the British Rule which were colonial and oppressive in nature. The committee noted that the Supreme Court in a number of cases of the Armed Forces personnel has given the ruling that punishments given to the accused were not commensurate with the offences committed and has set aside the orders of the commanding authorities. It is high time that these Acts be reviewed in totality in the light of the judgments delivered by the courts to make their provisions more democratic. The committee also noted that review of the above Acts be taken up urgently so that the revised Acts are in place before the establishment of the tribunal. Since the tribunal would deal with cases of all the three forces, the committee recommended that the common disciplinary code be created so as to bring uniformity in dispensation of justice to the Armed Forces personnel.

The Law Commission concluded that it was necessary to provide an appropriate appellate forum to entertain appeals against the final orders passed by the courts-martial. The Government introduced the Armed Forces Tribunal Bill, 2005 in Parliament on December 20, 2005 for the establishment of an independent Armed Forces Tribunal. The bill was referred to the Standing Committee of Defence for comment and report. In order to meet the aspiration of men in uniform, the Parliament passed the Armed Forces Tribunal Act, 2007. The Armed Forces Tribunals and its benches constituted under the Act for the first time provide a forum where applications in the service matters as well as appeals against the decisions of a court-martial could be taken up.

The establishment of Armed Forces Tribunal as an independent adjudicating forum for defence personnel fortifies their trust and confidence in the system of dispensation of justice. This concept is following the principle of natural justice. The Standing Committee noted that appeal against the judgment of the tribunal goes to the Supreme Court.

The Law Commission in its 187th report on Mode of Execution of Death Sentence and Incidental Matters in October 2003 discussed of studying the execution of the death penalty awarded according to the provisions of the Air Force Act, 1950. Section 34 of the Air Force Act provides for the various offences contemplated for which the death penalty can be awarded. This section empowers the court-martial to award the death sentence for the offences

mentioned in Section 34 (a) to (o) of the Air Force Act, 1950. Section 163 of the Air Force Act deals with discretion of the court-martial to either provide for the execution of the death sentence by hanging or by being shot to death. The Air Force Act, 1950 provides for the execution of death by being "shot to death". This method not being prescribed under the Code of Criminal Procedure is provided in the Air Force Act, 1950 for the execution of the death sentence. It is mentioned that unless the punishment is confirmed, by the concerned authorities under the Act, conviction is not executed. Section 153 of the Air Force Act provides for the finding and the order to be confirmed by the Central Government or any officer empowered by the same in this behalf. This Section provides for the mandatory review of all the decisions of the courts-martial by the Central Government. This Section enables the Central Government to scrutinise the irregularity pertaining to the procedure or finding of the court-martial. The Army Act, 1950 and the Navy Act, 1957 also provide for similar provisions like the Air Force Act, 1950. The Air Force Act, 1950 provides for the option of the execution of the death penalty by being shot to death are similar in nature to that of in the Army Act, 1950^[9] and the Navy Act, 1957^[10].

After referring to these relevant provisions in these Acts inference can be drawn that the method of shooting as one of the methods provided for execution of death penalty under the Air Force Act aims to make it simple and easy to be executed with the weapons and equipments available with these forces. The form of shooting a condemned man necessarily involves less agony as compared to that in the case of the hanging in which there is an elaborate procedure. The practice of this method both in various developing and developed countries is apparently clear because this method is simple, easy to execute and less painful.

The Armed Forces Tribunal has original jurisdiction in service matters, as well as appellate jurisdiction against the orders, findings and sentences awarded by courts-martial. The tribunal has the power to examine the decisions of the service authorities from the standpoint of justifiability and reasonableness. The appellate tribunals should not be a totally civilian appellate tribunal as has been provided in the United Kingdom since it may not be conducive to the discipline of the Armed Forces^[11].

It is necessary to ensure that Armed Forces are not deprived of the services of the cream of the society and that the bright and courageous among them do not keep out on account of inadequate machinery for getting justice in the Armed Forces, or for fear of being punished for no wrong done by them. It is equally necessary to ensure that punishment is not disproportionate to the offence and also to make the military law more humane and dynamic to bring it in tune with the culture in the Armed Forces of the countries. Military discipline cannot be based only upon domination and implicit obedience to the orders of the superior. It is not correct to say that in as much as the number of persons affected by military law and the courts-martial are small because the members of the Armed Forces have voluntarily submitted themselves to the existing system with all its defects. It should also be borne in mind that interference by the High Courts and the Supreme Court with the decisions

9 Section 34 (a) to (o) Deals with Offences Related to Enemy and Punishable with Death.

10 Section 147 Provides the Form of Death Sentence.

11 Supra note 6 at 8.

and findings of courts-martial are not totally excluded, if a single appellate tribunal is created to hear the appeals against the findings, decisions and orders of the courts-martial under all the three enactments.

Law Commission said that a right of appeal to the Supreme Court under the Army Act, 1950, the Air Force Act, 1950 and the Navy Act, 1957 where the court-martial has passed the sentence of death it has been confirmed by the Central Government or appropriate authority wherever required, suitable amendments be made in the above said Acts so as to provide a right to appeal to the Supreme Court against the order of confirmation of sentence of death by the Central Government or by appropriate authority. Law Commission also recommended that the Supreme Court while hearing the case where death punishment has been awarded should consist of at least five judges.

The tribunal is common to army, air force and navy. The seat of the tribunal is at Delhi, but it is open to the tribunal to hold its sittings at such other places as it may decide in the interest of convenience of all concerned. From the decision of the tribunal, a direct statutory appeal lies to the Supreme Court. This is not something new since such direct appeals lie to the Supreme Court already provided by certain other enactments. In view of proposed statutory appeal to the Supreme Court, it is expected that no High Court will entertain a writ petition under Article 226 of the Constitution of India against the orders of the appellate tribunal^[12]. If such an appeal is provided, it would be appropriate to delete Article 136 (2) of the Constitution which provides that the power to grant special leave to appeal conferred upon the Supreme Court by Article 136 (1) of the said Article is not applied to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

The High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute, under which the complaint has been taken, contains a mechanism for redressal of grievance. The researcher is of the opinion that the Armed Forces Tribunal became the first and last court for defence personnel, unless there is a point of law of general public importance involved.

If the High Court entertains a petition under Article 226 against the Armed Forces Tribunal's order by passing the machinery of the statute, i.e. Sections 30 and 31 of the Act, there is likelihood of anomalous situation for the aggrieved person is praying for relief from this court, the Supreme Court ruled in the case of *Union of India and Others v. Maj. Gen. Shri Kant Sharma and Another*^[13].

Article 136 (2) of the Constitution of India provides that the appellate jurisdiction of the High Court has been excluded in relation to any judgment, decree or order passed by any court or tribunal constituted by or under any law relating to the Armed Forces. If any person aggrieved by the order of the tribunal, moves before the High Court under Article 226 and the High Court entertains the petition and passes a judgment and order, the person who may be aggrieved against both the orders passed by the tribunal and the High Court, cannot challenge both the orders in one joint appeal. Once, the High Court entertains a petition under Article 226 of the Constitution against the order of the tribunal and decides the matter, the person who thus approached the High Court, will

also be precluded from filing an appeal under Section 30 with leave to appeal and Section 31 of the Armed Forces Tribunal Act. Therefore, it is always desirable for the High Court to act in terms of the law laid down by the Supreme Court, which is binding on the High Court under Article 141 of the Constitution, allowing the aggrieved person to avail the remedy under Sections 30 and 31 of the Act^[14].

Meaning of Tribunal

Tribunals are special alternative institutional mechanisms, usually brought into existence by or under a statute to decide disputes arising with reference to that particular statute, or to determine controversies arising out of any administrative law. Tribunals can be either private tribunals, or tribunals constituted under the Constitution or statutory tribunals which are created under statutes^[15]. Tribunal means the seat of a judge; the place where he administers justice; means the whole body of judges who compose a jurisdiction and sometimes it is taken for the jurisdiction which they exercise^[16]. Tribunals can have a judge as the sole member, or can have a combination of a judicial member and a technical member who is an expert in the field to which tribunal relates. In view of the huge pendency, courts are not able to bestow attention. Tribunals are free from the shackles of procedural law and evidence law, they can provide easy access to speedy justice in a cost-affordable and user-friendly manner. The judicial member acts as a bulwark against apprehensions of bias and ensures compliance with basic principles of natural justice. Tribunal decisions were made jointly by a panel of people who pool legal and other expert knowledge, and are the better for that range of skills. Tribunal's hearing could be simple and more informal. Tribunal should possess the independence, security and capacity associated with courts^[17].

All tribunals are not courts, though all courts are tribunals. Tribunals are setup in an organised State for the administration of justice. By administration of justice is meant the exercise of juridical power of the State to maintain and uphold rights and to punish wrongs. Armed Forces Tribunals have the authority of law to pronounce upon valuable rights. They act in a judicial manner and even on evidence on oath, but tribunals are not the part of the ordinary courts of civil judicature. Tribunals share the exercise of the judicial power of the State, but it is brought in existence to implement some administrative policy or to determine controversies arising out of administrative law. They are similar to courts, but are not courts.

Composition of the Tribunal and Benches

Armed Forces Tribunal consists of a chairperson and such number of judicial and administrative members as the Central Government may decide^[18]. The chairperson, in cases which having regard to the nature of the questions involved, are required to be decided by a bench composed of more than two members, may issue general or special order for its composition.

Any restriction or limitation on the jurisdiction, powers and authorities of the benches may only be placed in accordance

14 Ibid.

15 *Union of India v. R. Gandhi*, 2010 (11) SCC 1.

16 Maj. Gen. Nilendra Kumar, *The Armed Forces Tribunal Law 5* (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2010).

17 Supra note 15.

18 Armed Forces Tribunal Act, 2007, s. 5 (1).

12 Ibid.

13 AIR 2015 SC 2465.

with the provisions of the Armed Forces Tribunal Act, 2007. The Act does not indicate any difference in the jurisdiction, powers and authorities of the principal bench *vis-à-vis* other benches. A general order may have a continuous application over a length of time, e.g., all cases of appeal against a death penalty are heard by a bench of three members and a special order may address a particular situation.

The principal bench of the tribunal is headed by a chairperson, and has judicial and administrative members. A bench of the tribunal consists of one judicial and one administrative member^[19]. If the members of the bench differ in opinion on any point, the point is decided by majority, but if the members are equally divided, they state the point on which they differ and refer it to the chairperson. The point is decided according to the opinion of the majority of the members of the tribunal who have heard the case, including those who first heard it.

A bench consists of one judicial member and the chairperson, sitting as an administrative member. Such a composition would be contrary to the basic requirement of Section 5 (2) whereby a bench has to have an administrative member. The chairperson is vested with the authority to transfer a member from one bench to another bench of the tribunal in the event of inability of any bench from hearing any such proceedings for any reason. No transfer of any proceedings is made except after recording the reasons for doing so in writing. Formation of a bench having more than two members is envisaged and justified only in cases having regard to the nature of questions involved. This could be brought about by a way of an order issued by the chairperson in his opinion or rules made under the Act^[20].

Section 5 (4) of the Act clearly provides that the benches of the tribunal ordinarily sit at Delhi (which is known as the principal bench), and at such other places as the Central Government may, by notification, specify.

The location and number of regional benches is to be decided by the Central Government, such a decision is to be made known by way of a notification. One bench in each zone of the country to begin with and expand the same by setting up one bench in each State so that the litigants do not have problem in approaching the tribunal.

After operationalising of all the benches, all the cases which were pending before the various High Courts had been transferred by the High Courts to respective benches of the tribunal and also number of fresh cases have been filed at principal bench and other regional benches.

A total of 15 benches are created across India. The responsibility for the creation of the regional benches at Mumbai and Kochi has been entrusted to navy, while that for one at Gauhati has been given to the air force. The remaining benches are given to the army. A table indicating the member of benches and the location follows.

Sr. No.	Location	No. of Benches
1	Delhi (Principal Bench)	3
2	Chandigarh	3
3	Lucknow	3
4	Kolkata	1
5	Gauhati	1
6	Mumbai	1
7	Kochi	1
8	Chennai	1
9	Jaipur	1

19 Id., s. 5 (2).

20 Id., s. 5 (3).

Qualifications for Chairperson and other Members

A person who is a retired judge of the Supreme Court or a retired chief justice of the High Court can be appointed the chairperson of the tribunal. A person who is or has been a judge of the High Court can become judicial member of the tribunal^[21].

The administrative members are also recruited to assist the judicial members and they should hold the rank of major general or above for a total period of at least three years in the army or equivalent rank in the navy or the air force. He should have served for not less than three years as Judge Advocate General in the army or the air force or the navy, and is not below the rank of major general, commodore or air commodore^[22]. In the case of *Naik Ajmer Singh v. Union of India*^[23], an order of the Chandigarh Bench of the Armed Forces Tribunal has been challenged in the Punjab and Haryana High Court on the ground that it was written by administrative member, who does not possess any legal qualification. Naik Ajmer Singh had challenged the Summary Court-Martial proceedings in Armed Forces Tribunal but his petition was dismissed. He has now approached the Punjab and Haryana High Court. As per his petition, an administrative member is not competent and suitable for performing duties as a member of an appellate tribunal exercising powers under Section 15 of the Act; much less dictate an order. This case is pending before the Punjab and Haryana High Court.

Whereas the Armed Forces Tribunal is entitled to carry out judicial review of court-martial proceedings, grant bail and even enhance the sentence awarded by a court-martial. The qualifications prescribed cannot be deemed reasonably approximate to the standards of main stream judicial functionaries like even a magistrate or a district judge^[24].

A member of the appellate tribunal is to be a person of ability, integrity and standing having special knowledge of, and professional experience of not less than twenty-five years in the field from which he is selected. It would be in the opinion of the Central Government useful to the appellate tribunal.

The researcher is of the opinion that the members of the tribunal are independent persons, not civil servants. They should resemble courts and not bureaucratic boards. Even the dependence of the tribunals on the sponsoring parent department for infrastructural facilities or personnel may undermine the independence of the tribunal. Neither the infrastructure nor the staff are provided to the tribunals by sponsoring parent department. The tribunals have become full-fledged part of judicial system with no connection with the parent department. A common tribunal service has been established as an executing agency in the Ministry of Law and Justice.

It is desirable that all such tribunals should be under a single nodal ministry which is in a position to oversee the working of these tribunals. The independence of members discharging judicial functions in a tribunal cannot be diluted.

Jurisdiction

Jurisdiction of Armed Forces Tribunal is of two types. First is original jurisdiction and second is appellate jurisdiction.

21 Id., s. 6 (1) and (2).

22 Id., s. 6 (3).

23 WP(C) No. 12445 of 2011, available at: <http://highcourtchd.gov.in> (last visited on September 25, 2025).

24 Bhartesh Singh Thakur, "Order of Armed Forces Tribunal's Chandigarh Bench Challenged in High Court" Indian Express, July 10, 2011.

A. Original Jurisdiction

The Armed Forces Tribunal has original jurisdiction over service matters which are defined in Section 3 (o) of the Armed Forces Tribunal Act. It includes:

- Remuneration (including allowances), pension and other retirement benefits;
- Tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions;
- Summary disposal and trials where the punishment of dismissal is awarded;
- Any other matter, whatsoever, but not include matters relating to-
 1. orders issued under Section 18 ^[25] of the Army Act, 1950, Section 18 ^[26] of the Air Force Act, 1950 and Section 15(1) ^[27] of the Navy Act, 1957 and;
 2. 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, the Air Force Act and the Navy Act;
 3. leave of any kind;
 4. summary court-martial except where the punishment is of dismissal or imprisonment for more than three months.

B. Appellate Jurisdiction

The Armed Forces Tribunal has jurisdiction in relation to any appeal against any order, finding or sentence passed by a court-martial. Previously the appeals from courts-martial were only came before the army authorities or defence ministry, there was no judicial adjudication. But with the advent of the Armed Forces Tribunal Act, 2007, a regular appeal lies against the findings and sentence of court-martial under Section 15 of the Act and all pending suits or other proceedings pending before any court including a High Court were transferred to the Armed Forces Tribunal.

The Armed Forces Tribunal Act specifies the jurisdiction, powers and authority to be exercised by the tribunal in relation to matters of appeal against any order, decision, finding or sentence passed by a court-martial or any matter connected with it ^[28]. In the case of *Maj. Saurabh Saharan v. Union of India and Others* ^[29], the petitioner was serving as major in the army and was commissioned in year 2000. Whilst he was posted to 60 cavalry which was primarily associated with polo, he was in touch with foreign nationals and other sports persons. In respect of certain allegations leveled against him by a foreign national, Ms. Nancy Chapman, a United States citizen, court-martial proceedings were initiated. It was alleged that the petitioner had indulged in illegalities and violation of Army Rule 180. He was held guilty and punished for cashiered from service, along with rigorous imprisonment for three years. It was a matter of

record that the petitioner had been in military custody since April 16, 2012 alleging a series of irregularities and illegalities in the conduct of court-martial proceedings. The petitioner approached the Armed Forces Tribunal, Principal Bench, New Delhi. The jurisdiction under Section 15 (3) had not, in any manner, been limited by Section 164 of the Army Act.

The relevant observation of the Armed Forces Tribunal was that there was no conflict between the two sections. Section 15 of the Armed Forces Tribunal Act is the judicial power and Section 164 of the Army Act is an administrative power. Section 15 gives a judicial review power is already exercised and orders are passed by the authorities, then administrative remedy provided under Section 164 (2) automatically stand ousts. Section 21 of the Armed Forces Tribunal Act would not abrogate the power of the tribunal to entertain appeal against the order of court-martial. Even pendency of petition under Section 164 (2) of the Army Act does not prevent tribunal to entertain appeal under Section 15 of the Act against order of court-martial.

In the above mentioned case, it was held by the tribunal that any order, decision, finding or sentence passed by a court-martial or any other matter connected therewith or incidental thereto would be within the tribunal's authority and jurisdiction. The tribunal would be competent to pronounce upon the proceedings and procedure adopted by the court-martial, pending confirmation of sentence.

The Act specifies the right to any aggrieved person to prefer an appeal against any order, decision, finding or sentence passed by a court-martial in effective style and fixed method of procedure ^[30]. The tribunal is empowered to grant bail to a military accused under Section 15 (3) of the Act. The tribunal has no power to grant bail to a military convict. The power of the tribunal to grant bail to a military accused thus becomes even lower than that of the Sessions Court. Section 437 of the Code of Criminal Procedure states that "no accused 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".

The tribunal may have discretion to grant bail to the Armed Forces personnel, as is being provided by the High Courts to the accused persons under Section 437 of Code of Criminal Procedure. The provision relating to bail needs to be amended to ensure that the tribunal enjoys the powers of an appellate court under Section 389 of Code of Criminal Procedure in granting the bail to a military accused or convict. Section 389 of Code of Criminal Procedure provides for the suspension of sentence pending the appeal and release of appellant on bail as under:

- Pending any appeal by a convicted person, the appellate court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.
- Provided that the appellate court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:

25 Every person subject to this Act shall hold office during the pleasure of the President.

26 Every person subject to this Act shall hold office during the pleasure of the President.

27 Every officer shall hold office during the pleasure of the President.

28 Armed Forces Tribunal Act, 2007, s. 15 (1).

29 TA No. 07 of 2012, available at: www.aftdelhi.nic.in (last visited on September 19, 2024).

30 Armed Forces Tribunal Act, 2007, s. 15 (2).

- Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.
- The power conferred by this section on an appellate court may be exercised also by the High Court in the case of an appeal by convicted person to a court subordinate thereto.
- Where the convicted person satisfies the court by which he is convicted that he intends to present an appeal, the court shall,-
- where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or
- where the offence of which such person has been convicted is a bailable one, and he is on bail, order that the convicted person be released on bail unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the appellate court under SubSection (1), and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.
- When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

In the case of *Updesh Kumar v. Union of India and Others* ^[31], the petitioner was convicted by Summary General Court-Martial for an offence under Section 69 of the Army Act. He caused the death of naib subedar Gurmail Singh on January 7, 2006. The Summary General Court-Martial found the petitioner guilty, and awarded the sentence being to be reduced to rank, to suffer imprisonment for life, and to be dismissed from service. Writ Petition was filed before the Jammu and Kashmir High Court. During pendency of the petition, on February 25, 2010, Misc. Petition No. 30 of 2010 was filed by the petitioner for suspension of sentence, *inter-alia*, on the ground of having been in custody for four years and there being nobody to look after his ailing mother. Some medical documents of the mother were also filed during the pendency of writ petition, praying that the matter be transferred to the Armed Forces Tribunal, Regional Bench, Chandigarh. The petitioner prayed for grant of temporary bail on the ground of the petitioner's daughter being scheduled to be married on April 15, 2012. Photocopy of the marriage card was produced before the Armed Forces Tribunal. It was observed by the tribunal that looking to the gravity of the offence, the tribunal was not inclined to release him on bail, but he might be allowed to attend the marriage in custody for a period of two days at the place mentioned in the marriage card, duly escorted in police custody. The decision of the tribunal is correct. The bail was not granted because the offence of murder is heinous in nature.

The tribunal allows an appeal against conviction by a court-martial where the finding of the court-martial is legally not sustainable due to any reason ^[32]. The Armed Forces Tribunal, Principal Bench, New Delhi in the case of *Maj. S. S. Chillar v. Union of India and Others* ^[33], considered a

prayer against the punishment awarded by a General Court-Martial. The tribunal was of the opinion that the finding is totally defective. Defective in the sense that when the accused was not found guilty for possession of the hand grenade HE 36 Lot No. 610H KF-77, then no offence pertaining to this hand grenade could stand proved. The tribunal held that General Court-Martial was totally illegal and unsustainable in law. Then, the tribunal acquitted the accused.

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