

**ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL  
BENCH AT CHANDIMANDIR**

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OA No. 195 of 2015 and  
MA 2367 & 1148 of 2016, MA 712 of 2016, MA 2828, 2644 & 2643 of  
2015

**Maj Padma Lochan Hota** ..... **Applicant(s)**  
**Vs**  
**Union of India and others** ..... **Respondent(s)**

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For the Applicant (s) : Mr Navdeep Singh, Advocate

For the Respondent(s) : Mr Arvind Rajotia CGC  
for Resp No 1 & 3.

Ms Nidhi Garg Advocate  
for Resp No 2,

Mr Raghujeet Singh Madan Advocate  
for Resp No 4

**Coram: Hon'ble Justice Prakash Krishna, Judicial Member.**  
**Hon'ble Lt Gen Sanjiv Chachra (Retd), Administrative**  
**Member**

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**ORDER**  
**11.08.2016**

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**By Justice Prakash Krishna, Member (J)**

The present Original Application (OA) has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by a serving Army Officer impleading the four respondents namely, (1) Union of India through Secretary to Government of India, Ministry of Defence, (2) Secretary to the Government of India, Ministry of Road Transport and Highways, (3) Quarter Master General, QMG's Branch and (4) the National Highway Authority of India, through its Project Director, Project Implementation Unit (NHAI), claiming the following reliefs:

- (i) “Petitioner therefore prays that respondents No.1,2 and 3 may be directed to coordinate and resolve the issue amongst themselves by reviewing and setting aside the impugned letter dated 17.06.2014 (Annexure A-3) issued by Respondent No.2, as already indicated by the said respondent, which is in apparent and direct contravention of legislative provisions (Annexure A-1) as also currently valid letters issued by the Respondents (Annexure A-2) as also affirmed by the Hon’ble Supreme Court;
- (ii) With a further prayer that till the time the matter is resolved, the operation of Annexure A-3 which has ostensible been issued in the garb of a clarification under the RTI Act, may be kept in abeyance since it directly contravenes legislative and statutory provisions and law which has been affirmed upto the highest Court of the land and also threatens the existing statutory conditions of service and service privileges of the petitioner and similarly placed serving defence personnel.
- (iii) Any other order or direction deemed fit by the Hon’ble Tribunal.”

2. The present application has been filed briefly on the pleas, *inter alia*, that the applicant is a commissioned officer of the Regular Indian Army and one of the most important and long standing service privilege available to serving defence personnel of the regular forces is their entitlement under the Indian Tolls (Army & Air Force) Act, 1901. The said Act provides for toll-tax exemption to ‘on duty’ and ‘off duty’ serving personnel of the regular forces on all roads and bridges in India. Relevant portion of Section 3 of the Indian Tolls (Army & Air Force) Act, 1901 (Annexure A-1) relied upon, is reproduced as under:

**“3. Exemption from tolls.-** The following person and property, namely:-

- (a) All officers, soldiers and airmen of –

- (i) The Regular Forces.
- (ii) Any Irregular Corps
- (b) All members of the Territorial Army or of the National Cadet Corps when on duty or when proceeding to or returning from duty.
- (c) All officers, soldiers and airmen of the Indian Reserve Forces when proceeding from their place of residence on being called out for service, training, or muster or when, proceeding back to their place of residence after such service, training or muster.  
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- (g) to (i)....xxx...xx..xx.....

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**shall be exempted from payment of any tolls-**

- (i) on embarking or disembarking, or on being shipped or landed, from or upon any landing-place, or
- (ii) in passing along or over any turnpike or other road bridge, or
- (iii) on being carried by means of any ferry otherwise demandable by virtue of any Act, Ordinance, Regulation, order or direction of any legislature or other public authority in India;”

3. It is further pleaded that in the early 2000s, under the Public-Private-Partnership programmes, the Build-Operate-Transfer system was introduced for toll collection and certain private operators started refusing toll exemption after which the matter went into litigation. The Ministry of Law and Justice opined that Indian tolls (Army and Air Force) Act, 1901 is a Special Act which over-rides general Acts such as National Highways Act, 1956 and private vehicles of the officers, soldiers and airmen of regular forces are exempted from paying toll-tax irrespective of whether they are ‘on duty’ or not. The applicant further pleaded that Office Memorandum dated 17<sup>th</sup> June, 2014 filed as Annexure A-3, of Ministry of Road Transport and Highways, impugned in the present petition, is not in accordance with law. Hence,

the reliefs already reproduced above have been sought for. For the sake of convenience, Annexure A-3 is reproduced as under:

File No.H-24030/32/2014-(Toll)  
GOVERNMENT OF INDIA  
MINISTRY OF ROAD TRANSPORT & HIGHWAYS

Transport Bhavan, 1, Parliament Street,  
New Delhi, dated the 17<sup>th</sup> June, 2014.

**OFFICE MEMORANDUM**

Subject: RTI Act, 2005 –Clarification regarding National Highways Fee (Determination of Rates and Collection) Rules, 2008.

Rule -11(b) [i] of National Highways Fee (Determination of Rates and Collection) Rules, 2008, as amended, vehicles used for official purposes by the Ministry of Defence including those which are eligible for exemption in accordance with the provisions of the Indian Toll (Army and Air Force) Act, 1901 and rules made there under, as extended to Navy also. Further, as per Section-3 of the Indian Tolls (Army and Air Force) Act, 1901 all officers, soldiers, airmen and all members of the families of officers, soldiers, airmen or authorized followers are exempted from paying toll. References are being received in this Ministry regarding clarification whether:-

- a) under Indian Toll (Army and Air Force) Act, 1901 and rules made there under exemptions are available only to the serving personals and that only on use of Govt. vehicle:
- b) under Indian Toll (Army and Air Force) Act, 1901 and rules made there under no exemptions are available to the retired personals: and
- c) under Indian Toll (Army and Air Force) Act, 1901 and rules made there under no exemptions are available on use of personal vehicle:

2. The issue was re-examined and it is now being clarified that the exemption under Indian Toll (Army and Air Force) Act, 1901 is available only to the persons who are 'on duty' and does not pertain to retired personals. (No exemption is available on use of personal vehicle if it is not used for discharging any official purpose and duty, even if it accompanies the said official. The exemption is available only on production of pass as specified in the Indian Toll (Army and Air Force) Rules, 1942.

Sd/- (N.K.Sharma)  
Director (Toll)

4. This Tribunal by its order dated 19<sup>th</sup> February, 2015, granted an interim relief by staying operation of the impugned order Annexure A-3, issued by the Ministry of Road Transport and Highways, New Delhi.

5. On notice, two sets of written statements/reply have been filed. The respondents No. 1 and 3, who are Army and Ministry of Defence Authorities, have supported the case of the applicant and, as such, it is not necessary to reiterate their stand.

6. Respondent No.2 has filed a separate written statement wherein besides disputing the claim of the applicant on merits, has raised a preliminary objection with regard to the jurisdiction of this Tribunal to entertain and hear the present OA on the ground that the dispute raised in the application does not fall within the meaning of “service matter” as defined in the Armed Forces Tribunal Act, 2007 and, as such, this Tribunal has no jurisdiction. It has also been stated that similar controversy had come before the Delhi High Court in WP (C) No. 5686 of 2006 “Col T Prasad and another v. Union of India and others, (copy of the judgment not filed) wherein the identical claim has been denied. On a true and correct interpretation of the Indian Tolls (Army & Air Force) Act, 1901, the exemption under the Act is available only to the Army personnel who are on duty and it also does not pertain to retired Army personnel. No exemption is available on use of personal vehicle if it is not used for discharging any official purpose, even if it accompanies any army official.

7. The learned counsel for the parties were heard on the question of jurisdiction of this Tribunal to entertain and adjudicate the aforesaid dispute in the light of the provisions as contained in the Armed Forces Tribunal Act, 2007. It will not be out of place to mention here that

Respondent No.4 namely, ‘the National Highway Authority of India’ was impleaded subsequently on an application filed by applicant by the order dated 18<sup>th</sup> April, 2016.

8. Heard Mr. Navdeep Singh Advocate for the applicant, Mr Arvind Rajotia CGC for Respondents No 1 & 3, Ms Nidhi Garg Advocate for Respondent No 2 and Mr Raghujeeet Singh Madan Advocate for Respondent No 4, and also perused the orders/judgments placed before us.

9. By means of the present order, we propose to solely decide the preliminary objection raised by the main contesting respondents No. 2 and 4 with regard to the jurisdiction of this Tribunal. The learned counsel for the said respondents submitted that the controversy is no longer *res integra* and stands concluded against the present applicant in view of the judgment of the Apex Court in **Union of India and others Vs. Col G.S.Grewal [2014] 7 SCC 303.** The learned counsel for the respondents submits that the present lis is not ‘service matter’ in view of Section 3(o)(iv) of the AFT Act. To put it differently, under the clause ‘*any other matter whatsoever*’ will not mean to include disputes like the present one in the ambit and scope of “service matter”.

10. It is desirable to have a look to the various provisions of the Armed Forces Tribunal Act, 2007 and the reasons for its enactment. The preamble of the Armed Forces Tribunal Act, 2007 is described by its long title as an Act to: “*provide for the adjudication or trial by Armed Forces Tribunal of disputes and complaints with respect to*

*commission, appointments, enrolment and conditions of service in respect of persons subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950 and also to provide for appeals arising out of orders, findings or sentences of courts-martial held under the said Acts and for matters connected therewith or incidental thereto.”*

Section 2 of the Act provides that its provisions shall apply to all persons subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950 etc. In the present case, the applicant is a serving Army personnel and as such he is covered under Section 2 of the Act.

11. Section 14 of the Act provides for jurisdiction, powers and authority in service matters of the Tribunals. The relevant clauses (1) and (2) read as follows:

**“(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 immediately before that day by all courts (except the Supreme Court or a High Court exercising jurisdiction under Article 226 and 227 of the Constitution) in relation to all service matters.**

**(2) Subject to the other provisions of this Act, a person aggrieved by an order pertaining to any service matter may make an application to the Tribunal in such form and accompanied by such documents or other evidence and on payment of such fee as may be prescribed.”**

Section 15 of the Act provides jurisdiction, powers and authority in matters of appeal against court-martial verdict with which we are not presently concerned. In nutshell, the AFT Act has been given original

jurisdiction as well as appellate jurisdiction in service matters to the Tribunal.

12. Now comes the definition clause, defining 'service matters'. It is necessary to reproduce the entire section, which is reproduced below:

**3. Definitions :** In this Act, unless the context otherwise requires,—

(a) "Administrative Member" means a member of the Tribunal who is not a Judicial Member within the meaning of clause (g);

(b) "application" means an application made under sub-section (2) of section 14;

(c) "appointed day" means the date with effect from which the Tribunal is established by notification under section 4;

(d) "Bench" means a Bench of the Tribunal;

(e) "Chairperson" means the Chairperson of the Tribunal;

(f) "court martial" means a court martial held under the Army Act, '1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) including the disciplinary courts constituted under the Act or the Air Force Act, 1950; (45 of 1950)

(g) "Judicial Member" means a member of the Tribunal appointed as such under this Act, and includes the Chairperson, who possesses any of the qualifications specified in sub-section (2) of section 6;

(h) "Member" means a member (whether Judicial or Administrative) of the Tribunal and includes the Chairperson;

(i) "military custody" means the arrest or confinement of a person according to the usages of the service and includes naval or air force custody;

(j) "notification" means a notification published in the Official Gazette;

(k) "prescribed" means prescribed by rules made under this Act;

(l) "President" means the President of India;

(m) "rules" means the rules made under this Act;

(n) "service" means the service within or outside India;

**(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 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 matter, whatsoever.**

Neither it was argued nor pleaded that the present case falls either in clause (i) or (ii) or (iii) of Section 3(o) of the Act.

13. The learned counsel for the applicant submits that under the aforesaid residuary clause (iv), all matters, like the present one, are covered. In contra, the learned counsel for the contesting respondents



submitted that the action of Ministry of Road Transport and Highways cannot be judged by the Armed Forces Tribunal having limited jurisdiction with regard to conditions of service only of Armed Forces personnel.

14. A strong reliance was placed by the learned counsel for the contesting respondents on the judgment of the Apex Court in *Col G.S.Grewal's case (supra)*. In this case, the original applicant was a serving officer in the Army as Major but subsequently he was with the Department of Defence Production, which has a Director General of Quality Assurance (DGQA for short) as well as Defence Public Sector Undertaking (DPSU). He was seconded to DGQA in the rank of Major. He sought challenge to the promotion policy while working in the aforesaid department, before the AFT, Regional Bench, Chandigarh which was allowed and the matter travelled to the Supreme Court. The Supreme Court took notice of a judgment of the Principal Bench of AFT New Delhi and after noticing various provisions of the AFT Act, has reached to the following conclusion:

**“We may point out that merely because the respondent is subject to Army Act would not by itself be sufficient to conclude that the Tribunal has the jurisdiction to deal with any case brought before it by such a person. It would depend upon the subject matter which is brought before the Tribunal and the Tribunal is also required to determine as to whether such a subject matter falls within the definition of ‘Service Matters’, as contained in Section 3(o) of the AFT Act.”**

*(emphasis supplied)*

15. Thus, the Apex Court has laid down that before jurisdiction of Armed Forces Tribunal can be invoked, two conditions should be fulfilled cumulatively, viz, (i) the individual should be subject to the Army Act, Air Force Act or Navy Act, as the case may be, and (ii) the subject-matter which is brought before the Tribunal should fall within the definition of ‘service matters’ as contained in Section 3(o) of the AFT Act. In the present case, undoubtedly, condition No.1 is satisfied. Now we are called upon to examine whether by the impugned Office Memorandum (Annexure A-3) issued by the Ministry of Road Transport and Highways is such that it relates to the service condition of the applicant, or in other words, the subject matter of the OA is “service matter”. The singular submission of the applicant is that it is a service matter as it falls in clause (iv) of Section 3(o) of the Act. Statement of objects and reasons of the Armed Forces Tribunal Act, 2007 as also its preamble do suggest that the AFTs have been created to adjudicate only such disputes which are ‘service matter’ as defined in Section 3(o). We are of the opinion that the said clause ‘any other matter whatsoever’ should be read in the light of the subject and context of the Act. Principle of *ejusdem generis* will be applicable and clause (iv) will draw the colour from the earlier clauses (i) to (iii). *Ejusdem generis* theory provides that when particular words pertaining to a class, category or genus are followed by general words, the general words are construed as limited to things of the same kind as those specified. The Apex Court in *Bharat Heavy Electricals Limited v.*

**Gbohe Hi-Fabs Limited [2015] 5 Supreme Court Cases 718** has held that the principle of ejusdem generis does not apply in every situation. It considered Justice G.P.Singh's Principles of Statutory Interpretation and its earlier judgment and held as under:

“15. A word of caution is here necessary. The fact that the ejusdem generis rule is not applicable does not necessarily mean that the prima facie wide meaning of the word “other” or similar general words cannot be restricted if the language or the context and the policy of the Act demand a restricted construction. In the expression “defect of jurisdiction or other cause of a like nature” as they occur in Section 14(1) of the Limitation Act and generality of the words “other cause” is cut down expressly by the words “of a like nature”, though the rule of ejusdem generis is strictly not applicable as mention of a single species “defect of jurisdiction” does not constitute a genus. Another example that may here be mentioned is Section 129 of the Motor Vehicles Act which empowers any “police officer authorized in this behalf or other person authorized in this behalf by the State Government” to detain and seize vehicles used without certification of registration or permit. The words “other person” in this section cannot be construed by the rule of ejusdem generis for mention of single species, namely, “police officer” does not constitute a genus but having regard to the importance of the power to detain and seize vehicles it is proper to infer that the words “other person” were restricted to the category of government officers. In the same category falls the case interpreting the words” before filing a written statement or taking any other steps in the proceedings” as they occur in Section 34 of the Arbitration Act, 1940. In the context in which the expression “any other steps” finds place it has been rightly construed to mean a step clearly and unambiguously manifesting an intention to waive the benefit of arbitration agreement, although the rule of ejusdem generis has no application for mention of a single species viz. written statement does not constitute a genus.”

16. In the light of the above, the words “any other matter”, whatsoever, used in clause (iv) of Section 3(o) of the Act, should be given a restricted meaning to mean any service dispute of armed forces individual. Any other interpretation would be contrary to the policy of the said Act. Clauses (i) to (iii) of Section 3(o) has enumerated various aspects of service and under clause (iv) any dispute akin to clause (i) to (iii) but not specifically mentioned would fall but not all sorts of dispute relating to Armed Forces personnel.

17. The learned counsel for the contesting respondents invited our attention to a decision of the Principal Bench, Armed Forces Tribunal, New Delhi in *OA No. 05 of 2016 ‘Ex-Hav/Clk Jayanta Boruah v. Union of India and others’* decided on *11. 02.2016* wherein the Tribunal has held as follows:

**“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, cannot 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 cannot 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.”**

18. A dispute was raised whether the exemption from payment of toll-tax by the serving Armed Forces Personnel ‘on duty’ and ‘off duty’ is or is not a condition of service. We need not delve upon this issue as

the pleading lacks the material facts. The pleading is as vague as it could be. Neither of the parties could place any material before us so far, so as to arrive at a definite conclusion what are service conditions of the applicant. Nonetheless, even if for the sake of the argument, it is one of the conditions of service, the argument of the contesting respondents that the service conditions can be enforced only against the employer i.e, Union of India, Ministry of Defence and not against the Ministry of Road Transport and Highways is well founded. The learned counsel for the contesting respondent No.4 has filed copies of two judgments of the Apex Court “State of Punjab and Ors v. Kailash Nath etc” 1989 AIR 558 and State of Madhya Pradesh and others v. Shardul Singh 1970 SCR 302\_ wherein it has been held that ‘condition of service’ may be classified as salary or wages including subsistence allowance during suspension, the periodical increments, pay-scale, leave, provident fund, gratuity, confirmation, promotion, seniority, tenure or termination of service, compulsory of premature retirement, superannuation, pension, changing the age of superannuation, deputation and disciplinary proceedings.

19. We find that the present application does not fulfil the conditions of Section 14 of the Armed Forces Tribunal Act. The said section provides for jurisdiction, powers and authority of Armed Forces Tribunal in service matters. Its sub-section (2) provides that subject to other provisions of the Act, a person aggrieved by an order, may make an application to the Tribunal in the prescribed form and accompanied

by such documents or other evidence and on payment of such fee as may be prescribed. There is total lack of evidence in the present case as to whether the applicant as a serving officer, has ever paid any toll tax while travelling on road 'on duty' or 'off duty'. There is not even a single instance mentioned in the petition. When this was pointed out to the learned counsel for the applicant, he could refer the following portion from the application:

**“After issuance of the impugned letter, most of the toll operators on NHAI have started demanding and extracting toll tax from serving defence personnel, including the petitioner and similarly placed serving defence personnel.”**

20. These allegations cannot be relied upon due to lack of specific particulars, i.e. date and time of the travel, name of Toll Plaza, vehicle number etc. What we mean to say is that in the absence of payment of any toll-tax and its receipt, no reliance can be placed on the applicant's stand. The pleadings are general in nature and such type of assertions cannot be taken for any adjudication by this Tribunal. In the absence of any evidence of payment of toll-tax, we are of the view that the present OA lacks 'cause of action'.

21. The learned counsel for the applicant has filed copies of the order dated 26<sup>th</sup> May, 2006 passed by the Punjab and Haryana High Court in CWP No. 8508 of 2006 on the applicability of the Indian Tolls (Army and Air Force) Act, 1901. The Hon'ble High Court summarily dismissed the petition, bereft of any fact or issue involved for adjudication and further refused to interfere in the matter by

observing that “ we find no reason to interfere in the matter. The Act itself provides some concession for the defence personnel. We see no reason to hold otherwise”. The SLP has been dismissed summarily subsequently by the Apex Court on 22.09.2006. It is further brought out that CWP No. 11216 of 2016 filed by Respondents No. 2 and 4 on this issue, is pending before the Hon’ble Punjab and Haryana High Court.

22. Last, but not the least, we find that under Section 14 of the Act, the Tribunal is empowered to decide both questions of law and facts. A bare look to the relief clause would show that as a matter of fact quashing of Annexure A-3 has been sought for but it has been so worded as if some direction is being sought for. The applicant has sought direction from this Tribunal to respondents No. 1, 2 & 3 to cooperate and resolve the issue amongst themselves. No such direction can be issued by this Tribunal, and in particular to Respondents No. 2 and 4, in view of the express language of Section 14(1) of the Act. The said provision has already been reproduced above and it says that the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority, exercisable immediately before that day by all courts (*except the Supreme Court or a High Court exercising jurisdiction under Article 226 and 227 of the Constitution*) in relation to all service matters. These two Articles deals with power of the High Court and Supreme Court to issue a Writ, Order or direction. The meaning of word ‘Writ’ is to issue a direction to a subordinate authority or Court to do or forbear from doing a particular act. This power

(power to issue direction) has been expressly excluded and not conferred upon the Tribunal. Therefore, the desired relief is beyond the purview of the Armed Forces Tribunal Act, 2007.

23. In nutshell, we are of the opinion that this Tribunal lacks jurisdiction to entertain the present dispute in view of Sections 3(o) and 14 of the Armed Forces Tribunal Act, 2007. The subject-matter of the OA is Annexure A-3 and its validity, which in our opinion is not a 'service matter'. It is with regard to charging of Toll-Tax by the National Highway Authority of India, under the Ministry of Road Transport and Highways. On the above ground alone, without entering into the merits of the case, the petition is dismissed.

24. The miscellaneous applications submitted along with OA also stand disposed of. The stay order granted by this Tribunal vide order dated 19.02.2015 is vacated.

**(Lt Gen Sanjiv Chachra (Retd))**

**(Justice Prakash Krishna)**

11.08.2016

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Whether the judgment for reference is to be put on internet? Yes / No.