COURT No.2, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

2.

OA 1477/2018

Col Mukul Dev ... **Applicant**
Versus

Union of India & Ors. ...**Respondents**

For Applicant : Mr. Rajiv Manglik, Advocate
For Respondents : Mr. K.S.Bhati, Sr.CGSC

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE AIR MARSHAL B.B.P. SINHA, MEMBER (A)

O R D E R
30.06.2020

Vide our detailed order of even date, we have dismissed the main OA No.1477/2018. Faced with this situation, learned counsel for the applicant makes an oral prayer for grant of leave for impugning the order of the Tribunal to the Hon'ble Supreme Court in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007.

After hearing learned counsel for the applicant and going through our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order rendered by the Tribunal, therefore, prayer for grant of leave to appeal stands dismissed.

[redacted]

[JUSTICE SUNITA GUPTA]
MEMBER (J)

[redacted]

(AIR MARSHAL B.B.P. SINHA)
MEMBER (A)

/nk/

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O.A. No. 1477 of 2018

In the matter of :

Col Mukul Dev ... **Applicant**

Versus

Union of India & Ors. ... **Respondents**

For Applicant : Mr. Rajiv Manglik, Advocate

For Respondents : Gp Capt (Retd.) K.S. Bhati, Sr. CGSC with Mr. Dinkar Adeeb, Advocate

CORAM :

HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE AIR MARSHAL B.B.P. SINHA, MEMBER (A)

ORDER

Applicant, Col Mukul Dev, aggrieved by the award of 'Displeasure' has filed the instant OA seeking the following reliefs :

(i) To declare the action of the respondents as unjust, arbitrary and illegal; and

(ii) To call for records from AHQ and HQ 12 Corps dealing with the issue of SCN and letter of Displeasure; and

(iii) To quash and set aside order dated 12 July 2018 passed by Respondent No. 1 rejecting the Statutory

Complaint filed by the Applicant against the award of "Displeasure" to the applicant; and

(iv) To quash and set aside order dated 24 May 2018 awarding the "Displeasure" to the applicant; and

(v) To direct the respondents to remove the award of "Displeasure" from his service profile and grant all consequential relief(s) in a time bound manner; and

(vi) To award exemplary costs in favour of the applicant.

(vii) To pass such other and further orders which their lordships may deem fit and proper in the existing facts and circumstances of the case."

By way of interim relief, the applicant prayed as under :

"To direct the respondents to keep one vacancy of Brig reserve in JAG for the applicant out of the three existing vacancies till the final outcome of the instant OA."

2. The facts germane to the filing of the present OA are that the respondents issued a letter dated 31.07.2017 for grant of Ration Money Allowance to officers of Defence Forces in Peace Areas under the Direct Benefit Transfer (DBT) system in lieu of ration in kind with effect from

01.07.2017. In order to challenge the action of the Respondents, applicant gave legal notice dated 01.07.2017 to Respondent No. 1 i.e. Union of India through the Secretary to Govt. of India, MoD under Section 80 of the Code of Civil Procedure, 1908 ('CPC' for brief), which got circulated in the print and social media. Pursuant to a query raised by the respondents, applicant confirmed that he had issued notice dated 01.07.2017 in his personal capacity and that the right to seek legal remedy has not been abrogated by any law or constitution inspite of the applicant belonging to the Army as available to any other citizen of India. The respondents further specifically sought the information from the applicant vide letter dated 28.08.2017 as to the authority under which the legal notice has been circulated in social media. Vide letter dated 29.08.2017, the applicant specifically replied to the respondents that he has not circulated the said legal notice on any social media and is not aware as to how the notice found its way to social media or in the newspapers. The respondents issued Show Cause Notice (SCN) dated 18.02.2018 alleging that the applicant has violated the

provisions of Para 552 and Para 559 of the Regulations for the Army by issuing such legal notice under Section 80 of CPC and placed the applicant under DV Ban as per the policy with direction to the applicant to submit his reply by 20.03.2018. The applicant's earlier OA [O.A. No. 198 of 2017] was due for final adjudication and since the outcome of the OA for consideration of the applicant for promotion to the rank of Brigadier would have become infructuous due to imposition of DV Ban by the respondents, he filed M.A. No. 318 of 2018 in the aforesaid OA seeking stay on the proceedings of the SCN and the operation of DV Ban for the purposes of consideration of the applicant to the rank of Brigadier. Partial relief was granted to the applicant, however, MA in respect of the SCN, was dismissed as premature. However, time was extended for 15 days for replying to the SCN and respondents were directed to take the decision of SCN as expeditiously as possible. The applicant had earlier sought the copy (cc) of the legal notice upon which the respondents have taken the cognizance and issued the applicant with SCN but the respondents never supplied

the same. On enquiry from his well-wishers regarding the legal notice circulating on whatsapp or any other social media, he came to know that the legal notice is not the same as issued by the applicant. Applicant gave his reply to SCN vide letter dated 07.05.2017. The Respondent No.4, without proper application of mind, gave a 'Displeasure' to the applicant vide order dated 24.05.2018 holding that the applicant has violated the provisions of Paras 552 and 559 of the Regulations for the Army. Challenging the said order, the applicant preferred O.A. No. 1020 of 2018 which was disposed of on 30.05.2018 with the directions to the applicant to file a statutory complaint so as to exhaust departmental remedies and with directions to the respondents to dispose of such statutory complaint within a period of six weeks from the date of its receipt. Accordingly, a statutory complaint was preferred by the applicant on 31.05.2018, which was disposed of vide letter dated 12.07.2018 by the respondents as learnt from the reply filed by the respondents in C.W.P No. 10071 of 2018 at Hon'ble High Court of Rajasthan at Jodhpur, which was filed by the

applicant on 13.07.2018 and transferred to AFT, Circuit Bench, Jodhpur. It is further alleged that the respondents have already filled one vacancy out of the three and in case the 'Displeasure' awarded to the applicant is not quashed in time and the applicant is not granted the consequential relief in a time-bound manner, the respondents would fill the remaining vacancies also. Hence, this OA.

3. We have heard Mr. Rajiv Manglik, learned counsel for the applicant and Mr. K.S. Bhati, learned Senior Central Government Standing Counsel appearing for the respondents. We have also gone through the pleadings, the documents available on record and the original record produced by the respondents for our perusal.

4. Mr. Rajiv Manglik, learned counsel for the applicant vehemently argued that the respondents have been granting free ration for all officers as a service privilege besides other service privileges as mentioned in the advertisements issued by the respondents for seeking candidates for commissions into the Army. Reference is

made to Para 17 of the said advertisement, appearing as Annexure A-3, which reads as under :

> ***"17. <u>Privileges</u>. In addition to the CTC mentioned above, Army provides free Medical facilities for self & dependents, Canteen facilities, Entitled <u>Ration</u>, Mess/Club/Sports facilities, Furnished Govt. Accommodation, Car/Housing Loan at subsidized rate."***

5. On 31.07.2017, Respondents issued following letter, which is at Annexure A-5 :

> ***"No. 03(01)/2016/D(QS)***
> ***Government of India***
> ***Ministry of Defence***
>
> ***New Delhi dated the 31st July 2017***
>
> ***To***
> ***The Chief of the Army Staff,***
> ***The Chief of the Naval Staff,***
> ***The Chief of the Air Staff,***
> ***New Delhi.***
>
> ***Subject : <u>Ration Money Allowance to the officers of Defence Forces posted in Peace Areas under Direct Benefit Transfer (DBT) system</u>***
>
> ***Sir,***
>
> ***I am directed to refer to Department of Expenditure, Ministry of Finance's Resolution No. 11-1/2016-IC dated 06th July, 2017 and to convey the sanction of the President of India for the grant of Ration Money Allowance to officers of Defence Forces in Peace Areas under the Direct Benefit Transfer (DBT) system in lieu of ration in kind.***
>
> ***2. This would be applicable from 01st July, 2017.***
>
> ***3. It is requested to kindly make immediate necessary arrangements for Direct Benefit Transfer of Ration Money Allowance to the bank accounts of officers of Defence Forces in peace areas.***

4. This issues with the concurrence of Ministry of Defence (Finance) vide R.F. No.8/14/Fin(QB) Vol-I/161 dated 25/07/2017/

Yours faithfully,

Sd/-

(KAMAL KANT)
Under Secretary to the Government of India
xxxxxx"

6. Since this order challenged the terms and conditions of the service of the applicant, in terms of the Policy dated 24.10.2016 issued by the respondents after the promulgation of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act') for issuance of notice under Section 80 of CPC before filing any suit in civil case against the Govt., a legal notice under Section 80 of CPC was sent by the applicant to the Union of India through Shri Sanjay Mitra, Defence Secretary, Ministry of Defence for withdrawal of such illegal orders. Learned counsel submitted that the respondents wrongly interpreted this policy that it only deals with the notice issued by Advocate because the Policy specifically states that the legal notices issued by the Advocate are to be rejected as Third Party petitions as such it envisages the issue of notice under Section 80 of CPC by the serving personnel only.

7. Learned counsel further urged that the respondents wrongly interpreted the provisions of the AFT Act and held that the issue of free rations is covered under 'service matters' under Section 3(o), whereas the Government has stopped the free rations which is a privilege as per the advertisement issued by the respondents themselves.

8. It was next contended that while awarding 'Displeasure', Respondent No. 4 has not applied his mind independently as he does not have any copy of legal notice. Despite request, the applicant was not supplied with certified copy of the legal notice on which action has been taken by the respondents.

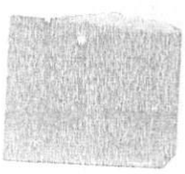
9. To seek judicial remedy is a fundamental right of every citizen and provisions of the Army Rules 19, 20 and 21, which abrogate fundamental rights of the person subject to the Army Act, do not curb the fundamental right of seeking judicial remedy. The Constitution and the law made by the Parliament have given the liberty to the litigant to choose the forum for redressal of his grievance

and even if the wrong forum has been chosen, he cannot be punished for the same.

10. Counsel further urged that Paras 552 and 559 of the Regulations for the Army has no statutory force whereas Section 80 of CPC is a statutory provision. The regulations cannot override statutory provisions. Moreover, in view of the letter dated 31.07.2017, whereby respondents had withdrawn ration, the applicant wanted to challenge this policy. It used to be consistent stand of the respondents that no challenge lies before the AFT to the Policy decision. As such, provision of Section 21 of the AFT Act for availing alternate departmental remedy does not arise. Reliance is placed on order dated 31.07.2018 passed by AFT (Principal Bench) in ***O.A. No. 144 of 2015 [Sub Maj/Chief 'D' Man Hari Om Dubey Vs. Union of India & Others]*** and order dated 10.10.2012 passed by AFT, Chandigarh Bench in ***O.A. No. 1175 of 2011 [Jasreen Dhillon Vs. Union of India and others]***. Therefore, there was no other remedy available to the applicant but to issue notice under Section 80 of CPC for redressal of his grievances.

11. Learned senior counsel for the respondents, on the other hand, at the outset, challenged the jurisdiction of the Tribunal to entertain the OA, *inter alia,* on the ground that the applicant was last posted at Jodhpur where AFT, Circuit Bench is functioning twice a month and he was under orders for posting to Bathinda, which is under the jurisdiction of the AFT, Regional Bench at Chandigarh. The applicant initially approached the Principal Bench by way of O.A. No. 198 of 2017, M.A. No. 318 of 2018 and O.A. No. 1020 of 2018. Thereafter, he chose to approach Hon'ble High Court of Rajasthan at Jodhpur by way of C.W.P. No. 10071 of 2018, which was transferred to AFT, Circuit Bench at Jodhpur as T.A. No. 03 of 2018. This forum-hunting at applicant's convenience, whims and fancies cannot be allowed. Thus, the OA is liable to be dismissed on the ground of jurisdiction alone.

12. Learned senior counsel further submitted that grant of free ration to all officers is not a 'service privilege' but is granted as a matter of policy from time to time. The advertisement quoted by the applicant is of no help as it



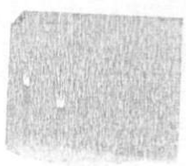
only gives out what all a cadet on joining the Army would be entitled to but these are not mandatory in nature. It does not create any statutory right for any candidate who wanted to join Army. The grant of free ration is not a condition of service as being linked by the applicant. The act of applicant to serve a legal notice to Defence Secretary is *ex facie* illegal because the applicant could not have issued a legal notice under Section 80 of CPC when provisions of CPC are not applicable to any proceedings under the Army Act or AFT Act. Section 9 of the CPC bars the jurisdiction of civil court to take cognizance of matters which are expressly or impliedly barred. Section 33 of the AFT Act excludes the jurisdiction of civil court in relation to service matters as defined in Section 3(o) of the Act. Ration Money Allowance falls under the definition of 'service matter'. By issuing the legal notice to Defence Secretary, the applicant has violated the provisions of Paras 552 and 559 of the Regulations for the Army, hence was liable to action. Reference is placed on ***Ex-Capt Ashwani Kumar Katoch Vs. Union of India and others [1995 Supp. (4) SCC 715]***.

13. Learned senior counsel further canvassed that the policy letter relied upon by the applicant is only for Advocates and is not applicable to person subject to Army Act. It is submitted that the competent authority has passed the orders after due application of mind. Decisions taken in administrative matters should not be interfered with as this Tribunal is not sitting in appeal over the orders passed by the competent authority. Reliance is placed on :

1. Union of India and others Vs. Brig J.S. Sivia [MLJ 1996 SC 3]
2. Union of India and others Vs. Harjeet Singh Sandhu etc. [(2001) 5 SCC 593]
3. Tata Cellular Vs. Union of India [(1994) 6 SCC 651]
4. Jasbir Singh Chhabra and others Vs. State of Punjab and others [(2010) 4 SCC 192]
5. Union of India & Ors. Vs. Lt Col Kuldeep Yadav [Civil Appeal No.(s) 7603 of 2019 judgment dated 25.09.2019].

Learned Sr. CGSC thus concluded his arguments indicating that the applicant is not entitled to any relief sought by him and the OA deserved to be dismissed.

14. Countering the submissions of learned senior counsel for the respondents, learned counsel for the applicant submitted that the applicant filed C.W.P. No. 10071 of 2018 at Hon'ble High Court of Rajasthan at Jodhpur due to the fact that the Circuit Bench of AFT, Jodhpur was not sitting regularly. However, the respondents took objection before the High Court regarding jurisdiction of the High Court to deal with the matter and when High Court transferred the matter to AFT (Circuit Bench) Jodhpur, the respondents objected to the jurisdiction of the AFT on flimsy grounds. The matter was disposed of by holding it non-maintainable and now, since the applicant has been posted out from Jodhpur to Bathinda, the respondents, in order to cause further delay, want the applicant to approach Chandigarh Bench of AFT, although they know fully well that since inception, the matter has been dealt with by Principal Bench only. It is the respondents who are deliberately trying to force the applicant to go from one forum to another, which they are now terming as forum-hunting.



15. On merits, submissions made earlier were reiterated. However, it was submitted that now the applicant is not pressing the interim relief of keeping one vacancy of Brig reserve in JAG out of three existing vacancies.

16. After considering the rival contentions raised by the learned counsel for both sides and going through the various documents and record produced before us, the following points arise for our consideration :

i) Whether AFT Principal Bench has territorial jurisdiction to entertain the OA ?

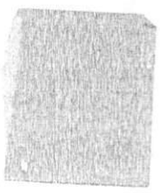
ii) Whether grant of free ration is a service matter ?

iii) If the answer to point No. 2 is in affirmative, whether Civil Court has jurisdiction to entertain a suit ?

iv) Whether the applicant, if aggrieved by the letter dated 31st July, 2017, can disregard the authorized channel of correspondence as per Regulations 552 and 559 of the Army ? If so, its effect ?

v) Whether the Tribunal should interfere in the punishment awarded to the applicant ?

17. Coming to the first issue of territorial jurisdiction of this Tribunal to entertain the OA, perusal of the pleadings



of parties makes it clear that it has a chequered history. Applicant has given a detailed history as to how he has been litigating with the respondents since 2008 for his promotions with which we are not concerned at this stage. However, pursuant to legal notice sent by the applicant under Section 80 of CPC to the Defence Secretary, MoD, he was served with a SCN. At that time, his O.A. No. 198 of 2017 against his non-consideration by Selection Board for the rank of Brigadier was pending before the Principal Bench. Applicant filed M.A. No. 318 of 2018 pressing for grant of stay on the proceedings relating to SCN. The MA was dismissed as 'premature'. However, applicant was granted 15 days' time to file reply to SCN. The same was filed and vide letter dated 24.05.2018, the applicant was awarded 'Displeasure'. Applicant filed O.A. No. 1020 of 2018 again before the Principal Bench of AFT for quashing of the award of displeasure which was disposed of vide order dated 30.05.2018 directing the applicant to first exhaust departmental remedy and to dispose of the same within a period of six weeks. Applicant filed statutory complaint on 31.05.2018, which was required to be

finalised by 12.07.2018. It is not understandable as to why the applicant filed C.W.P. 10071 of 2018 before the Hon'ble High Court of Rajasthan at Jodhpur on 13.07.2018 even if by that time, statutory complaint, as per his version, was not disposed of because as per the details given by the respondents in their additional counter affidavit, he was posted at Jodhpur since 2016. Legal notice sent by the applicant to Defence Secretary in July, 2017 was served from Jodhpur and he was posted at Jodhpur. He was also served with SCN at Jodhpur and reply thereto was also sent from Jodhpur. Award of 'Displeasure' by GOC 12 Corps was also passed at Jodhpur. Therefore, Respondents took objection to the jurisdiction of the Hon'ble High Court. When the matter was transferred to AFT, Circuit Bench at Jodhpur by the High Court of Rajasthan, Respondents again took objection to the maintainability of the OA. However, the matter was disposed of by the Circuit Bench of AFT at Jodhpur on 24.08.2018 as non-maintainable for not challenging the non-empanelment to the rank of Brigadier through statutory complaint. Hence, in all fairness, after

exhausting this remedy, the applicant should have approached the same Bench.

18. However, statutory complaint was decided by the competent authority at Delhi. As per Rule 6 of the Armed Forces Tribunal (Procedure) Rules, 2007, Tribunal can entertain an application where cause of action wholly or 'partly arises'. Therefore, since 'part of cause of action' has arisen at Delhi, OA can be entertained.

19. There is another aspect of the matter. It is a matter of record that due to paucity of Members, most of the Regional Benches of AFT including Jodhpur (Circuit Bench) at present are not functional. Therefore, relegating the applicant, at this juncture when both the parties have been finally heard at length, to Jodhpur Bench will otherwise be not in the interest of justice. Even otherwise, it is not even the case of the respondents that this Tribunal lacks inherent jurisdiction. Their basic objection is that the applicant is indulging in forum-hunting.

20. This takes us to the next and core issue *'whether grant of free ration is a service matter ?'*

Relying upon Para 17 of the advertisement issued by the respondents, the applicant has alleged that free ration is a privilege and not a service condition. However, this plea is devoid of any merit as the advertisement only gives out what all a cadet would be entitled to on joining the Army as an officer. It does not create any statutory right for any candidate who wants to join Army. 'Service Privileges' are only those which have been specified in Chapter V of the Army Act, 1950. These service privileges do not include grant of free ration or canteen facilities etc.

21. The genesis of the case is the letter dated 31.07.2017 and subject of this letter is :

> ***"Subject : Ration Money Allowance to the officers of Defence Forces posted in Peace Areas under Direct Benefit Transfer (DBT) system"***

As such, the letter itself in categorical terms states that 'Ration Money Allowance' will be given to officers of Defence Forces posted in peace areas under Direct Benefit Transfer (DBT) system in lieu of ration in kind. That being so, it is covered under the term 'service matter', which includes remuneration (allowances). The term

'remuneration' means reward given for services rendered by a person. It also includes in its ambit grant of entitled Rations, clothing and other benefits such as Railway warrants and concessional vouchers etc. It is not mere payment of work done, but something more than wages. It means whatever consideration a person gets for giving his services which can be in cash or in kind. The term 'remuneration' has been used in its widest sense. Thus, issue of providing free ration is part of 'service matter' as defined in Section 3(o) of the AFT Act.

22. That leads us to the next question *'whether in a case relating to 'service matter', Civil Court will have jurisdiction to try a suit ?'.*

Section 33 of the AFT Act deals with exclusion of jurisdiction of civil courts. The section states :

> ***"33. Exclusion of jurisdiction of civil courts.— On and from the date from which any jurisdiction, powers and authority becomes exercisable by the Tribunal in relation to service matters under this Act, no civil court shall have, or be entitled to exercise, such jurisdiction, power or authority in relation to those service matters."***

23. This is further reiterated by the Law Commission of India in its Report No. 272 issued in October, 2017, which deals with "Assessment of Statutory Framework of Tribunals in India". Annexure VI to this Report lists out Acts which preclude jurisdiction of civil courts wherein Armed Forces Tribunal Act, 2007 has been listed at Serial No. 4.

Moreover, the Preamble of the AFT Act states :

> ***"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 court martial held under the said Acts and for matters connected therewith or incidental thereto."***

24. Section 2(1) of the Act reiterates that this Act shall apply to all persons subject to Army Act, Navy Act and the Air Force Act.

25. The preamble of the Code of Civil Procedure, 1908 states that it is an Act to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature.

26. Section 9 of the CPC states that the Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

27. As seen above, Section 33 of the AFT Act expressly bars the jurisdiction of Civil Courts in relation to service matters. Respondents have relied upon the observations made by Hon'ble Supreme Court in ***Dhulabhai & Ors. Vs. The State of Madhya Pradesh*** ***[AIR 1969 SC 78]***, wherein while discussing the ambit of Section 9 of the CPC observed:

> ***"Where the statute gives a finality to the orders of the special tribunals the Civil Courts' jurisdiction must be held to be excluded if there is adequate remedy to do, what the Civil Courts would normally do in a suit."***

28. Learned counsel for the applicant, however, relied upon the following observations made by Hon'ble Supreme Court in ***Ramesh Chand Ardawatiya Vs. Anil Panjwani [AIR 2003 SC 2508]*** :

> ***"Where there is a special Tribunal conferred with jurisdiction or exclusive jurisdiction to try particular class of cases even then the Civil Court can entertain a civil suit of that class on availability of a few grounds. An exclusion of jurisdiction of Civil Court is not to be readily inferred. An objection as to the exclusion of Civil Court's jurisdiction for availability of alternative forum should be taken before the Trial Court and at the earliest failing which the higher Court may refuse to entertain the plea in the absence of proof of prejudice."***

29. With due respect, this observation does not help the applicant. That was a case relating to Rajasthan Co-operative Societies Act, 1965. Section 137 of the Act barred the jurisdiction of civil or revenue courts in respect of certain matters specified therein. On factual matrix of the case, it was found that the disputes between the parties did not fall in the relevant clauses so as to exclude the jurisdiction of Civil Court. Moreover, no objection to

jurisdictional incompetence was taken till the matter landed in the Supreme Court. Under the circumstances, it was observed that it will be too late in the day to permit such an objection being taken and urged at the hearing before the Hon'ble Supreme Court. Things are entirely different in the instant case. The issuance/stoppage of ration is an allowance and, therefore, falls under 'service matters', as defined in Section 3(o) of the AFT Act. Objection regarding jurisdiction of the Civil Court to entertain any suit pursuant to legal notice under Section 80 of CPC is being taken by the Respondents at the very first available opportunity.

30. In this scenario, since issue/non-issue of entitled ration is a 'service matter', it was incumbent upon the applicant to invoke the jurisdiction of the Tribunal (AFT) after exhausting alternate remedy available under the Army Act in consonance with the provisions of Section 21 of the AFT Act and not to resort to issuance of legal notice under Section 80 of CPC directly to the Govt. of India, through Defence Secretary, MoD for filing civil suit.

31. As regards submission of the applicant that being a person subject to the Army Act, only three fundamental rights have been abrogated under the provisions of Army Rules 19, 20 and 21 and the right to seek legal remedy has not been abrogated. Constitution itself provides that reasonable restrictions can be imposed for exercise of that right. Moreover, the fundamental rights available to persons subject to Army Act to seek remedy under the law have not been abrogated. However, the person is required to seek remedy under the provisions of the rules which are applicable to him. The provision under which a person subject to Army Act can approach the Court with regard to his grievance relating to conditions of service is only by filing petition before the AFT and jurisdictions of the other Courts have been excluded under Section 33 of the Act. The notice under Section 80 of CPC can only be given, if person wants to file the case against the Central Government under the Civil Procedure Code. The requirement of legal notice does not exist in matters which are to be filed before the AFT.

32. Applicant has tried to take resort to the policy letter issued by ADG (DV), IHQ of MoD (Army) for issuance of notice under Section 80 of CPC. However, title of this policy letter states "Response to legal notices served by Advocates on behalf of the Petitioners/Complainants". The title clearly denotes the extent and scope of the policy letter. The same is meant for the Advocates and is not applicable to persons subject to Army Act. Moreover, the word 'legal notice' has not been issued in this letter. The policy letter only speaks of complaints and representations from serving Armed Forces personnel.

33. In case, the applicant was aggrieved by the letter dated 31st July, 2017, the remedy available to him was contained in Section 27 of the Army Act, which requires that an officer is required to submit statutory complaint through proper channel. Para 552 of the Regulations for the Army Volume–II provides that authorized channel of correspondence shall be followed in official correspondences. Further, according to Para 559 thereof, correspondence with officers at MoD and Army HQs on

personal matters is forbidden to all ranks. For the sake of convenience, these regulations are reproduced as under :

> *"552. Official Channel. — (a) The authorised channel of official correspondence from a regimental officer is through the adjutant and from the OC unit through the station, brigade/sub-area and div/area commanders. Purely departmental matters will be sent direct to the departmental officer concerned. OsC detachments will forward all correspondence through their OsC units except on matters of purely local concern, in which case copies will be furnished to OsC units. An application from a JCO, WO, NCO or man will be made to his company commander, who, if necessary, will lay it before the CO of the unit.*
>
> *(b) Direct correspondence between general officers, brigade or equivalent commanders, COs and heads of departments will be signed by such officers themselves. The general rule to be observed is that official correspondence will be conducted between equals in rank, and that any officer of junior rank corresponding with an officer of senior rank will do so through the staff officer of the latter.*
>
> *559. Correspondence With Officers At Army Headquarters. — All ranks are forbidden to*

write private letters or make irregular approaches to officials at Army Headquarters or Ministry of Defence on official personal matters, such as promotion, appointment, posting, transfer and discipline.

Attempts, direct or indirect, to obtain preferential treatment on any application by the use of outside influence are strictly prohibited."

34. Instead of adopting this cannel, the applicant chose to issue a legal notice under Section 80 of CPC directly to Govt. of India through Defence Secretary, MoD, which was widely circulated on social media as well as in print media, thus he violated provisions of Paras 552 and 559 of the Regulations for the Army.

35. Much emphasis was laid by the applicant for submitting that despite repeated requests, he was not supplied the certified copy of the legal notice. Non-supply of copy of legal notice to the applicant does not help the applicant in any manner because the applicant vide his letter No. 46298/rations/LN/03 dated 03.08.2017 admitted that legal notice dated 01.07.2017 has been

initiated, signed and served by him in his personal capacity. In any case, if according to the applicant, some other notice was published in social media/print media, he himself could have placed the copy of the same on record since he was the author of the notice which was not done.

36. The other submissions that the stoppage of ration was a policy matter and respondents had been taking objections before the AFT that it cannot deal with policy matters, at the most, remedy available to the applicant was to invoke the writ jurisdiction of the High Court/Supreme Court for which no notice under Section 80 of CPC was required to be served upon the Central Government.

37. Thus, it becomes clear that the applicant, who is well versed with the legal provisions working as Dy. JAG Officer, violated the legal provisions for which after ascertaining from him that legal notice was sent by him, a show cause notice was served upon him. The same was challenged by him by filing M.A. No. 318 of 2018 in O.A.

No. 198 of 2017, which was pending adjudication at that time before the Principal Bench, AFT. The observations made by the Tribunal in Para 47 is of relevance and reproduced as under:

> ***"47. Having heard the learned counsel for both sides at length, we fail to understand what prompted the applicant to file the instant M.A. in the main O.A. when there is not even a causal connection with the questions involved in the main O.A. We, thus, without going into detailed discussion on the issue, whether this is a 'service matter' in the first instance, and can a serving personnel under the Army Act use the provision of 80 CPC to file a case in the civil court, rather than the AFT, which question requires a separate consideration, the facts that are emerging are clear that the applicant has issued a legal notice and the respondents have, after seeking his confirmation of having actually initiated the said legal notice, issued a show cause notice seeking his detailed response under the provisions of Paragraphs 552 and 559 of the Regulations for the Army. The applicant, therefore, is duty bound to reply to the said show cause notice rather than seeking any orders from this Tribunal in this regard. No disciplinary action has so***

far been taken or even contemplated and thus coming to the Tribunal by moving a miscellaneous application as the present one and then building the case to project as if it has all the connections with the main O.A. on account of some action already taken or likely to be taken by the respondents against him, which, in turn, would stall his promotion as Brig does not appear to be a correct approach at this stage at least. The applicant, as is known, is an officer with a legal background and quite aware of the law, rules and regulations of the Armed Forces and thus apparently has tried to seek a different forum for redressal. The linkage of the show cause notice to the O.A. and allegation of harassment of the applicant seems far-fetched, when even the root cause of the show cause notice is the legal notice initiated by the applicant himself, may be in his wisdom he could espouse the cause through this mode, then he, at the same time, should not run away from responding to the notice putting him to show cause cannot attach any mala fide intention to the respondents. Perusal of the notings convinces us that due procedure has been followed and no action is taken by the respondents in haste. We intentionally do not want to enter into more details finding the instant application being premature, thus not

sustainable. It calls for dismissal on that count. Ordered accordingly."

38. *Ex-Capt Ashwani Kumar Katoch (supra)* was also a case where the appellant (in that case) had addressed a letter to the then Law Minister levelling allegations against his superiors. For violating the authorised channel for official correspondence, as indicated in Regulations 553 and 557, action was proposed to be taken against him under Rule 14 of the Army Rules, 1954. A show cause notice was served upon the appellant. After considering the reply and his past conduct as well, he was removed from service. A Single Judge of the High Court allowed writ petition. However, the Division Bench of the High Court allowed the appeal reversing the order of the Ld. Single Judge and upheld the order of removal by which the services of the applicant came to be terminated. Against this, a Special Leave Petition was preferred before Hon'ble Supreme Court, Para 6 of the judgment dated 17.08.1994 passed in Civil Appeal No. 3830 of 1993, being relevant, is reproduced as under :

"6. The appellant argued his appeal in person and took us through the relevant

material placed on record. It would appear from the decision of the High Court that the point mainly canvassed was that the order did not disclose the basis on which the Chief of Army Staff thought it inexpedient and impracticable to hold the court-martial against him. The decision of the Chief of Army Staff referred to in the second half of Rule 14(2) may by necessary implication convey that he was satisfied that the trial of the officer by court-martial was inexpedient or impracticable. That view has found favour with the Division Bench of the High Court. However, the only allegation against the appellant was that he had written a letter dated 13-8-1977 to the then Law Minister in violation of Regulation 557 quote earlier and had thereby committed a grave irregularity and was, therefore, guilty of misconduct unbecoming of an Army Officer. The appellant denied having written any such letter but the Division Bench of the High Court found intrinsic evidence in the letter betraying the appellant as the author thereof. It is, therefore, not possible to uphold his contention that he had not written the letter. That was the only ground on which further action was proposed to be taken. Having regard to the track record of the appellant it would be unnecessary for us, even if we uphold the contention of the appellant that the Chief of the Army Staff did not arrive at the required satisfaction,

to remit the matter to the authorities for holding a court-martial because the issue involved would be whether or not the appellant had written the letter in question. That would only prolong the appellant's agony. After the Division Bench of the High Court came to the conclusion that there was intrinsic evidence in the letter indicating that it was the appellant who wrote it, and we think this conclusion is not assailable, the only question which survives is whether writing of such a letter in contravention of Regulation 557 invites the penalty under Rule 14 of the Rules. It was not disputed before us nor was it disputed before the High Court that such an infraction would attract Rule 14(2) of the Army Rules. That being so the infraction must be taken as established and having regard to his past defaults in regard to some of which he was let off leniently in the hope that he will correct himself, it is difficult to hold, keeping the requirement of army discipline in mind, that the authorities had erred in terminating his services. We, therefore, do not think that this is a fit case in which we should exercise our extraordinary jurisdiction under Article 136 of the Constitution."

39. For contravening Regulation 557, a very serious note was taken by the competent authority thereby terminating

the services of the appellant in that case. In the instant case, the applicant, who is well versed with the legal provisions, has violated the proper channels, therefore, competent authority who is supposed to maintain discipline in the Army, thought it appropriate to take action against the applicant and after following due process of law and due application of mind, awarded the 'Displeasure', which in the facts and circumstances of the case, cannot be said to be perverse or arbitrary or illegal.

40. It has been consistent view of the Hon'ble Supreme Court that the Tribunal ordinarily shall not interfere with the subjective satisfaction of the competent authority.

41. In *Tata Cellular (supra)*, after discussing number of judgments, Hon'ble Supreme Court culled out the following principles :

> ***"(1) The modem trend points to judicial restraint in administrative action.***
>
> ***(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.***
>
> ***(3) The court does not have the expertise to correct the administrative decisions. If***

a review of the administrative decision is permitted, it will be substituting its own decision, without the necessary expertise which itself may be fallible."

42. Again the following observations were made by the Hon'ble Supreme Court in *Jasbir Singh Chhabra and others (supra)* :

"34. It is trite to say that while exercising power of judicial review, the superior courts should not readily accept the charge of malus animus laid against the State and its functionaries. The burden to prove the charge of malafides is always on the person who moves the Court for invalidation of the action of the State and/or its agencies and instrumentalities on the ground that the same is vitiated due to malafides and the courts should resist the temptation of drawing dubious inferences of malafides or bad faith on the basis of vague and bald allegations or inchoate pleadings. In such cases, wisdom would demand that the Court should insist upon furnishing of some tangible evidence by the petitioner in support of his/her allegations.

35. It must always be remembered that in a democratic polity like ours, the functions of the Government are carried out by different individuals at different levels. The issues and policy matters which are required to be

decided by the Government are dealt with by several functionaries some of whom may record notings on the files favouring a particular person or group of persons. Someone may suggest a particular line of action, which may not be conducive to public interest and others may suggest adoption of a different mode in larger public interest. However, the final decision is required to be taken by the designated authority keeping in view the larger public interest. The notings recorded in the files cannot be made basis for recording a finding that the ultimate decision taken by the Government is tainted by malafides or is influenced by extraneous considerations. The Court is duty bound to carefully take note of the same. In this context, reference can usefully be made to the decision of the Constitution Bench in E.P. Royappa v. State of T.N. "

43. Observations made in Para 22 of the judgment in *Kuldeep Yadav (supra)* are of paramount importance and thus read as under :

"22. It is no more res integra that the Tribunal is competent and empowered to interfere with the punishment awarded by the appropriate authority in any departmental action, on the ground that the same is excessive or disproportionate to the misconduct proved against the delinquent

officer. However, exercise of that power is circumscribed. It can be invoked only in exceptional and rare cases, when the punishment awarded by the disciplinary authority shocks the conscience of the Tribunal or is so unreasonable that no reasonable person would have taken such an action. The Tribunal, ordinarily, is not expected to examine the quantum and nature of punishment awarded by the disciplinary authority as a court of appeal and substitute its own view and findings by replacing the subjective satisfaction arrived at by the competent authority in the backdrop of the evidence on record."

44. In view of the foregoing, we do not find any infirmity in the impugned order which warrants interference. That being so, OA lacks merit and is accordingly dismissed.

45. Pending applications, if any, are also dismissed.

Pronounced in open court on this 30th day of June, 2020.

[JUSTICE SUNITA GUPTA]
MEMBER (J)

[AIR MARSHAL B.B.P. SINHA]
MEMBER (A)

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