

COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

5.

OA 658/2023

JWO Rama Kumar SB

through his wife Smt D Nagalaxmi **... Applicant**

Versus

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

For Applicant : Shri Durgesh Kumar Sharma
and Shri Rakesh Singh, Advocate

For Respondents : Shri Harish V Shankar, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT. GEN. C.P. MOHANTY, MEMBER (A)

O R D E R

17.03.2023

During the pendency of his trial by General Court Martial, the appellant JWO Rama Kumar has invoked the jurisdiction of this Tribunal for the second time at an interlocutory stage by filing this appeal under Section 15 of the Armed Forces Tribunal Act 2007 and the reliefs sought by the appellant in Para 8 of the O.A read as under:

- (a) To direct the respondents No. 03 to consider and dispose of the appeal dated 15 Feb 23 under Section 161(1) of AF Act 1950 & representations dated 24 Feb 23, 01 March 23 & 02 March 23 (**Annexure A-1 Colly**) of

the applicant before the final finding of GCM in the interest of Justice.

- (b) Direct the respondents not to violate the statutory provisions and conduct the fair trial of applicant in accordance with law in the interest of Justice.
- (c) To pass any other order as deem fit and proper in the interest of Justice.

2. The appellant is working in the Indian Air Force as a Junior Warrant Officer and on account of certain acts of commission and omission committed by him in the discharge of his duties in the matter of willfully cutting of cables of Auto Pilot Junction Box of an aircraft Mi-17 V5 ZP-5176 of 152 Helicopter unit, a Court of Inquiry (Col) was held against him. Finding a prima facie case made out for holding a trial, a charge sheet has been issued to him and the following five charges have been levelled against him:

“ First Charge Section 62(a) AF Act, 1950

WILFULLY DAMAGING AIRCRAFT MATERIAL BELONGING TO THE GOVERNMENT

In that he

At Air Force Station Sarsawa, on 24 November 2020, willfully cut the cables of Auto Pilot Junction Box of aircraft Mi-17 V5 ZP-5176 of 152 Helicopter Unit, thereby causing damage to the aircraft material belonging to the Government.

Second Charge Section 62(a) AF Act, 1950

WILFULLY DAMAGING AIRCRAFT MATERIAL BELONGING TO THE GOVERNMENT

In that he

At Air Force Station Sarsawa, on 03 December 2020, willfully cut the cables of Auto Pilot Junction Box of aircraft Mi-17 V5 ZP-5146 of 152 Helicopter Unit, thereby causing damage to the aircraft material belonging to the Government.

Third Charge Section 42(e) AF Act, 1950

NEGLECTING TO OBEY A GENERAL ORDER

In that he

At Air Force Station Sarsawa, on 03 December 2020, neglected to obey Para 3(d) of TSI Vol I Section 'B' leaflet No. Tech/Admin/01 dated May 13 by entering the aircraft, MI-17 V5 ZP-5146 of 152 Helicopter Unit without authorization during the DI.

Fourth Charge Section 65 AF Act, 1950(Alternative)

AN ACT PREJUDICIAL TO GOOD ORDER AND AIR FORCE DISCIPLINE

In that he

At Air Force Station Sarsawa, on 03 December 2020, improperly and without reasonable excuse entered the aircraft, Mi-17 V5 ZP-5146 of 152 Helicopter Unit when the daily inspection of said aircraft was under progress.

Fifth Charge Section 60 AF Act, 1950

HAVING BEEN DULY SWORN BEFORE A COURT COMPETENT UNDER THE AIR FORCE ACT, 1950 TO ADMINISTER AN OATH OR AFFIRMATION, MAKING A FALSE STATEMENT WHICH HE KNEW TO BE FALSE

In that he

At Air Force Station Sarsawa, on 08 December 2020, having been duly sworn as a witness before a Court of Inquiry assembled by Air Officer Commanding- 30 Wing Air Force vide Entry No. 2 in station Routine

Order Serial No. 94 of 2020, made the following statement when questioned by the Court with respect to number of times he entered the aircraft MI-17 ZP-5146 on 03 Dec 20, which he knew to be false, namely;

"I entered the aircraft two times, out of which, second time I entered the cockpit"

The trial is in progress. Inter alia contending that the Court

Martial is being held in violation of various procedural

aspects of the matter, he has filed appeals/representations collectively vide Annexure A1. The first is an appeal under Section 161(1) of the Air Force Act, 1950 challenging the orders dated 8.02.2023 and 10.02.2023 passed by the General Court Martial, wherein the prayer not to close the case till final disposal of his complaint pending in the Court of Hon'ble CJM Court, Saharanpur is decided. The rejection was after an order passed by this Bench in an earlier order pass at the instance of the applicant in OA No. 329/202 certain prayers with regard to identification parade and inspection of certain signed proceedings by the counsel for the appellant are the subject matter of this appeal. Secondly, the application/representation is with respect of illegal confinement and to find out the whereabouts of the accused for various periods. Thirdly, is a application-cum-representation for immediate intervention on the ground that impartial justice is not being done in the Court Martial and a fair trial cannot be expected. Challenge is also made to the biasness of the judicial authority in conducting the CoI, request for abstaining from recording evidence of

witness through video conferencing and various other procedural aspects during the pendency of the matter.

3. As all these appeals/representations are pending, the appellant wants interference at this interlocutory stage, by means of this OA. That apart, as already indicated hereinabove, seeking intervention at an interlocutory stage earlier, the appellant had approached this Tribunal by filing O.A 329 of 2023 and even though this Tribunal had reservation in interfering with the matter at the interlocutory stage, vide order dated 09.02.2023, disposed of the O.A when the respondents themselves agreed to decide an appeal submitted by the appellant on 25.01.2023 within a week. The appeal having been decided, the said order is also challenged in these proceedings.

4. By taking us through the records, even though the learned counsel for the appellant tried to indicate that the proceedings are being held in an illegal and arbitrary manner and, therefore interference should be made. Mr. Harish V Shankar, learned counsel for the respondents raised a preliminary objection with regard to maintainability of the appeal. He argued that at this interlocutory stage, an

appeal under Section 15 of the AFT Act is not maintainable, and an appeal is maintainable only after the final determination of the issues in question. In support of his contention, he invited our attention to a judgment rendered by a Coordinate Bench of this Tribunal on 07.04.2015 in O.A 176 of 2015 i.e., **Hav Sham Das D Vs. UOI & Ors.** to say that against the interlocutory orders which are not final determination of an issue, an appeal under Section 15 of the AFT Act is not maintainable.

5. Learned counsel for the respondents argued that the CoI conducted is to primarily assess the feasibility of conducting a regular Court Martial and based on the findings of the Court Martial, when the trial is pending, at every interlocutory stage of the Court Martial until and unless the statutory procedures prescribed are not violated interference should not be made. The learned counsel further argued that in this case looking into the nature of allegations made against the appellant and the conduct of the appellant in making appeals/representations only to delay the proceedings and even approaching this Tribunal, indulgence into the matter should not be made.

6. We have learned counsel for the parties at length and we find that there are serious allegations against the appellant and Court Martial proceedings into there allegations are pending.

7. Now two issues warrant consideration at this stage. The first is, as to whether against every interim or interlocutory order passed in a pending proceeding an appeal under Section 15 is maintainable before this Tribunal and the second is, as to whether in the facts and circumstances of the case interference at this interlocutory stage in the case in hand is called for.

8. As far as the first question is concerned, the issue has been considered by a Coordinate Bench of this Tribunal on 07.04.2015 in the case of **Hav Sham Das D Vs. UOI & Ors** (O.A No. 176/2015), In that case, the provisions of sub sections (1),(3) and (6) of the Section 15 of the AFT Act were meticulously analyzed and scrutinized in the backdrop of various judgments not only of this Tribunal but also of the Hon'le Supreme Court and with regard to the issue as to whether every order or decision passed in a Court Martial proceedings can be appealed under sub section (1) of

Section 15 of the AFT Act was discussed from Paragraph 13 onwards. After tracing the history of the law which led to the enactment of the AFT Act based on the principles culled out by the Hon'ble Supreme Court in the case of **Lt Col Prithi Pal Singh Bedi v. UoI (1982) 3 SCC 140**, the 169th Report of the Law Commission, the statement and objects and reasons for bringing into force the AFT Act and the procedures being followed much before the coming into force of the AFT Act, the Coordinate Bench considered various judgments and legal issues and finally after analyzing all the principles in Para 24 and 25 answered the issue in the following manner:

"24 Applying the principle to sub-section (1) of Section 15 of the Act, the contention that the expression 'any order' must mean 'all orders' or 'every order' does not appear to be sound. It is pertinent to mention that certain final orders such as the one under Section 151 of the Army Act, 1950, may also be passed by a Court martial.

25 Having thus considered all the relevant aspects of the matter, including the legislative history, object, basic scheme and the provisions of the Act and the nature of Court Martial Proceedings we are not inclined to accept the argument that that any order passed by the court Martial would be appealable under sub-section (1) of Section 15 of the Act. The provision is applicable to a final order only as any contrary interpretation would not only frustrate the purpose of the Act but also make the entire system of administration of justice in the Armed Forces unworkable."

Finally, the question formulated for consideration in Para 12 as detailed herein above was answered in the negative by holding that the words “all orders or every order” appearing in Section 15(1) of the AFT Act will not permit that each and every order passed in the Court Martial proceedings can be subjected to appeal under Section 15 of the AFT Act. That being so, analyzing the facts of the present case and evaluating them in the backdrop of the legal principles laid down in the case of **Hav Sham das** (supra), we are of the considered view that the first objection raised by Mr. Harish V Shankar on behalf of the appellant has to be upheld.

9. As far as the second ground is concerned, it is a well settled principle of law that in a pending trial or proceeding before any statutory court or authority at every interlocutory stage, interference by an appellate court or Tribunal is not called for until and unless the breach or violation complained of is of a mandatory or statutory proceedings which causes great prejudice to the accused and cannot be remedied at a later stage. The trial should come to an end and it is only after the trial is concluded that a legal right would be available to an aggrieved person to challenge the

same. At every interlocutory stage of a statutory proceeding, interference by a Court of Tribunal is not called for.

10. In the present case, we find that once interference into various aspects of the matter had been clearly rejected by the Court in OA No. 329/2023 and when after the trial is completed, stay proceedings for confirmation of the findings of the Court Martial proceedings would be conducted by the statutory authority at the stage of confirmation of the proceedings under the statutory Act viz. the Air Force Act i.e. when confirmation proceedings are held in accordance with the proceedings prescribed from Sections 152 to 162 of the Air Force Act 1950. That being so, in our considered view, at this interlocutory stage of a trial, in the peculiar facts and circumstances of the case and the grounds canvassed, interference into the matter is not called for. The appellant can raise all these issues after the trial is concluded at the stage of confirmation with the competent authority and thereafter at the stage of appeal under Section 15 of the AFT Act before this Tribunal.

11. Accordingly, finding that the appellant has not made out a case for interference at this interlocutory stage of the

proceedings, we dismiss the appeal. There will be no order as to costs.

[RAJENDRA MENON]
CHAIRPERSON

[C.P. MOHANTY]
MEMBER (A)

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