

**ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

OA 11/2014 of Principal Bench, New Delhi

(OA 2741/2012 of Regional Bench, Chandigarh)

Maj Gen (Retd) Tej Krishan KaulPetitioner

Versus

UOI & OthersRespondents

For petitioner : Mr AK Srivastava, Advocates

For respondent : Mr Ankur Chibber, Advocate

For Bar Association : Mr Rajiv Manglik, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL HALI, MEMBER (J)


HON'BLE MR. JUSTICE R.C.MISHRA, MEMBER (J)


HON'BLE AIR MARSHAL J.N.BURMA, MEMBER (A)

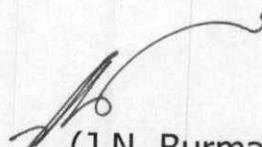
ORDER
07.08.2014

Reference answered and pronounced.

The records be now placed before the Hon'ble Chairperson for further orders.


(Sunil Hali)
Member (J)


(R.C. Mishra)
Member (J)


(J.N. Burma)
Member (A)

New Delhi
07.08.2014
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OPINION
07.08.2014

As per Justice RC Mishra, Member (J)

This is a reference, under Section 28 of the Armed Forces Tribunal, Act 2007 (For brevity" the Act"). The question to be answered is: -

"Whether under the Armed Forces Tribunal, Act 2007 power to transfer any matter from one Bench to another Bench, vests in only Chairperson, as provided in Section 27 of the AFT Act of 2007 or any Bench constituted under Section 5 of the AFT Act of 2007 itself can entertain application for



transfer of any matter pending before the Bench itself and transfer the matter to another Bench of the Tribunal?"

2. The petitioner moved an application for transfer of his petitions, pending before Chandigarh Bench of the Tribunal, as OA Nos. 3141 and 2741 of 2012, to the Principal Bench. It was heard and decided (vide order dated 14.08.2013 passed in AT 30 of 2013) by a Bench comprising one of us (Justice Sunil Hali), as the Acting Chairperson. Another Bench of the Tribunal headed by the Chairperson, while dealing with AT 31/2013 in OA 15/2013 at Guwahati, took the view that by virtue of Section 27 of the Act, it is only the Chairperson who can exercise power to transfer a case from one Bench to another. These are the back ground facts leading to the reference to resolve the conflict of opinions.
3. Before proceeding further, it is necessary to set out the relevant statutory provisions contained in the AFT Act 2007. Section 27 of the Act reads thus:

"Power of Chairperson to transfer cases from one Bench to another. – On the application of any of the parties and after notice to the parties concerned, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairperson may transfer any case pending before one Bench for disposal, to any other Bench".
4. Sub Section (i) of Section 5 of the Act provides that *the Tribunal shall consist of a chairperson, and such number of Judicial and Administrative Members as the Central Government may deem fit*



and, subject to the other provisions of this Act, the jurisdiction, powers and authority of the Tribunal may be exercised by Benches thereof".

5. The jurisdiction, powers and authority of the Tribunal have been broadly defined in Sub Section (1) of Section 14 of the Act in the following terms: -

" (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."

6. The thrust of the arguments advanced by Learned Counsel for the petitioner is that provisions of Section 27 can not be read in isolation and must be interpreted in the light of the Scheme of the Act as also the other relevant provisions. Making reference to the definitions of "Bench", "Chairperson", and "application" as given in Clauses (d) and (e) of Section 3 of the Act and Rule 2(1) (iv) of the Armed Forces Tribunal (Procedure) Rules, 2008, he has strenuously contended that a transfer application like any other application is required to be decided judicially on merits, in any case, by a bench headed by the Chairperson. He also highlighted the fact that there is no provision in the Act, corresponding to Sub Section (6) of Section 5 of the Administrative Tribunals Act 1985, that contemplates functioning of a Bench of Tribunal manned by the Chairman or any other member alone.



7. *Per contra*, learned counsel for the respondents and Shri Rajiv Manglik, representing the AFT Bar Association have submitted that the Chairperson is the *persona designata* empowered to transfer any case pending before one bench to any other bench for disposal according to law. To buttress the contention implicit reliance has been placed on decision of a Division Bench of the Delhi High Court in **Jitender Singh Aulakh and Anr. Vs Arun Kumar Mittal and Ors (2009) ILR5 Delhi 274**. Reference has also been made to certain observations made by learned single Judge of Calcutta High Court in the case of **Lt. Col. Mukul Dev Vs. Union of India** {W.P.No.759 (w) of 2012 decided on 18/01/2012} while dismissing the writ petition challenging issuance of notice to show cause notice against admission of a transfer petition by this Bench namely the Principal Bench. The observations are:-

"On the question of exercising his power under Section 27 of the Act, in my opinion such power is administrative in nature. In the Act, wherever it is contemplated that the Tribunal shall exercise its judicial power, such power has been vested specifically with the Tribunal and not on the Chairperson or the members in their respective designations. For instance, under Section 21, which deals with admission of the application, has been provided that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of the remedies available to him under the respective statutes covering the three wings of the Indian Army. Similarly, in relation to provision for appeal against any order, decision, finding or sentence passed by a Court Martial, it has been provided in Section 15 of the Act that the Tribunal would be the appellant authority. In Section 27 of the Act however, such power has been vested with the Chairperson only by



designation. The legislature thus has made a distinction between the Tribunal and its Chairperson so far as the jurisdiction of the respective authorities are concerned, and judicial power of the Tribunal has been vested in the Tribunal itself, whereas for the purpose of exercise of administrative power under Section 27 of the Act, such power has been vested with the Chairperson, and not the Tribunal as a body, constituted under Section 4 of the Act."

8. In **Jitender Singh's** case a *pari materia* provision contained in Section 25 of the Administrative Tribunals Act 1985 came up for consideration, though in a different context. The following excerpts of the judgment authored by Hon'ble AK Sikri, J (As his Lordship then was) provide a complete answer to the contention raised by learned counsel for the petitioner.

" 16. It cannot be disputed that under this provision it is only the Chairman who is given the power to transfer any case pending before one Bench for disposal by another Bench. He is, thus, the persona designata. It also cannot be disputed that there is no specific provision under the Act under which the Chairman is authorized to delegate this power to another Member".....

" 18. Specific power of "Transfer" of the case is given to the Chairman only under Section 25 of the Act. That is the power of the Chairman and not of the Tribunal. The Chairman is distinctly defined under Section 3 (g) of the Act and therefore, he is distinct from the Tribunal. No doubt, when he discharges judicial function under Section 14 of the Act in deciding applications filed under Section 19 of the Act, he acts as the Tribunal. However, he is also invested with certain powers, under the Act, as a Chairman and not as the Tribunal. Constitution of Benches of the Tribunal under Section 5 of the Act is one such power. Deciding

transfer application under Section 25 of the Act is the other power to be exercised as a Chairman. Whereas the Chairman is authorized to constitute the Benches of the Tribunal and delegate the power to another Member as well to constitute such Benches, there is no such power of delegation in Section 25 of the Act. Here he is persona designate, distinct from the Tribunal. One has to bear in mind clear distinction between the 'Tribunal' on the one hand and 'Chairman' on the other hand."

9. Apparently, the observations quoted above from the judgment in **Jitender's** case (supra) apply with full force to the provisions of Section 27 the Act. In **Balakrishna Udayar v. Vasudeva Ayyar, (AIR 1917 PC 71)**, Lord Atkinson has pointed out the difference between a persona designata and a legal tribunal. The difference is this that the "determinations of a persona designata are not to be treated as judgments of a legal tribunal". While approving the view the Apex Court in **Ram Chandra Aggarwal v. State of U.P. AIR 1966 S C 1888** proceeded to point out that in an earlier decision rendered by the Court in **Central Talkies Ltd., v. Dwarka Prasad, (AIR 1961 SC 606)** the meaning given to the expression persona designata in Osborn's Concise law Dictionary, 4th Edn., p. 263 as "a person who is pointed out or described as an individual as opposed to a person ascertained as a member of a class, or as filling a particular character" had already been accepted.
10. Further, there is yet another aspect of the matter that requires notice and consideration. The Act is a self contained Code and the enacted provisions therein have substituted the general provisions


under the common law pertaining to Jurisdiction and Power to transfer any pending case to the other Court. The maxim *generalia specialibus non derogant* (general provisions will not abrogate special provisions) would, therefore, be applicable.

11. To conclude, since the Chairperson exclusively enjoys the plenary power and jurisdiction to transfer any case from one bench to another, the argument that a transfer application may also be decided judicially on merits by a bench headed by the Chairperson is liable to be rejected. In this connection, it would be useful to refer to a well settled principle stated by Lord Roche in **Nazir Ahmad v. King Emperor AIR 1936 Privy Council 253 (2)** in these words :-

"Where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden."

12. A bare reading of the provision contained in Section 27 shows that the power exercisable by the Chairperson is analogous to the power under S.24, C.P.C. under which administrative as well as judicial order may be passed and as laid down by the Supreme Court in **Ranbir Yadav v. State of Bihar AIR 1995 SC 1219 :**

"availability of judicial power can not act as a bar to exercise of administrative power and Administrative powers must not yield place to judicial powers simply because in a given circumstance they co-exist."

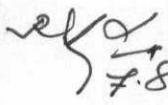


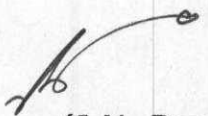
13. Having considered the matter from different angles, we are clear that none of the contentions raised by learned counsel for the petitioner deserves acceptance.
14. The question is, therefore, answered as under:-

No Bench of the Tribunal has power to transfer a case, pending before the Bench itself or before any other Bench, in view of the provisions of Section 27 of the Act, which expressly vests an exclusive power to transfer cases in the Chairperson.

Reference answered accordingly.


(Sunil Hali)
Member (J)


(R.C. Mishra)
Member (J)


(J.N. Burma)
Member (A)

New Delhi
07.08.2014
sk