IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

OA 460/2015

Capt G. Vivekanand **.....Petitioner**

Versus

UOI & Ors. **.....Respondents**

For petitioner : Mr Sukhjinder Singh with Mr IS Singh, Advocates

For respondents : Mr R Balasubramanian,ASG with Mr JS Yadav,Advocate

CORAM:
HON'BLE MR. JUSTICE PRAKASH TATIA, CHAIRPERSON.
HON'BLE MR. JUSTICE SURINDER SINGH THAKUR, MEMBER
HON'BLE LT. GEN. SANJIV LANGER, MEMBER.

JUDGMENT

Dated : September 11 , 2015.

By Chairperson

The issue of interpretation of Rule 6 of the Armed Forces (Procedure) Rules, 2008 has come up before this Larger Bench in view of the order passed by the Chairperson (one of us) dated 21.07.2015 passed in Misc. Application, MA 533/2015 filed in OA 460/2015 wherein it was brought to the notice of the Chairperson that while interpreting Rule 6 of the (Procedure) Rules of 2008 two coordinate Benches took two different views and, therefore, the controversy is required to be resolved by an authoritative pronouncement by a Larger Bench of the Tribunal.

2. The first order for consideration of Larger Bench is the order passed in OA 316/2013 Col GS Ahluwalia Vs. Union of India & Ors. decided by Court No.2 of the Bench of the Principal Bench of the Tribunal vide order dated 10.02.2014. In the said OA the petitioner challenged one communication dated 20.08.2013 by which the disciplinary proceeding was initiated against the petitioner. During pendency of the OA, another order was passed by the Chief of Army Staff dated 01.11.2013, confirming the action of attachment of the petitioner to LoC with immediate effect. The petitioner then amended the OA and questioned the order passed by the Chief of Army Staff dated 01.11.2013. The Court No.2 of the Bench of the Tribunal after considering the cases; *M/s Kusum Ingots and Alloys Ltd. Vs. Union of India and another, reported in AIR 2004 SC 2321; National Textile Corporation Ltd. & Another Vs. M/s Haribox Swalram and Others, reported in AIR 2004 SC 1998 (2004) 3 SCR 738; Alchemist Limited and Anr. Vs. State Bank of Sikkim and Others, reported in AIR 2007 SC 1812,* the Division Bench judgment of Hon'ble Delh High Court in a Writ Petition (C) No.1096/2013 *Lt Col Alok Kaushik (Retd.) Vs. Union of India decided on 21.02.2013*, in the case of *Ex. Rect./Gd Vinod Kumar Vs. Union of India & Ors., reported in 135(2006) DLT 414 of* Hon'ble Delhi High Court and yet another judgment of Division Bench of Delhi High Court delivered in *Writ Petition (C) No.5062/2011 Col Sarat Chandra Mishra Vs. Union of India decided*

on 20.07.2011, also considered the plea of *forum conveniens* and thereafter held, that the applicant/petitioner is *dominus litis* which implies that a party who makes a decision to file a suit has a right to choose his forum. After holding so, the Bench of the Tribunal held that, when the principle of ***forum conveniences*** is applied, the principle object is to see the convenience of both the parties. The essence of the rule being that the forum where the matter is agitated has to be effective, expedient for efficacious disposal of the petition. The Bench in the case of Col GS Ahluwalia, also considered the Full Bench judgment of the Delhi High Court rendered in the case of *M/s. Sterling Agro Industries Ltd. Vs. Union of India decided on 12.05.2011 (W.P.(C) 6570/2010)*. The Bench of the Tribunal observed, that the Bench of five Judges examined the correctness of the judgment passed by the Full Bench of Delhi High Court in the case of *New India Assurance Co. Ltd. Vs. Union of India & Ors*. According to the Bench of the Tribunal, the court in its judgment modified the observation of the Full Bench and observed that, while dealing with the question of jurisdiction, it had not taken into consideration the concept of ***forum conveniences***. According to the learned Members of the Tribunal who decided the case of Col G.S. Ahluwalia, Hon'ble Delhi High Court did not in any way dilute the principles laid by the Full Bench of the Delhi High Court and all that it stated was that, while considering the question of jurisdiction the ***forum conveniences*** has also to be taken into consideration. In its totality, in the case of Col G.S. Ahluwalia Bench of the Tribunal took

the view, that a matter can be brought before any Bench of the Tribunal having jurisdiction over the places mentioned in Rule 6(i) or (ii). The matter can also be filed as per the choice of the litigant before the Bench having territorial jurisdiction and where under the cause of action wholly or in part has arisen.

3. In spite of above view, expressed in the judgment of Col G.S. Ahluwalia, by the Bench of the Tribunal, another coordinate Bench i.e., Court No.3 of the Principal Bench of Armed Forces Tribunal, New Delhi took a different view in its order dated 28.05.2015 passed in *OA 342/2015 Brig HMS Chatewal Vs. Union of India & Ors.* and connected OA 586/2014, *Col V.J.S. Varaich Vs. Union of India & Ors.* In Brig HMS Chatwal's case the Bench of Court No.3, noticed that the same Bench i.e. the Court No.3 itself, earlier in the case of *Lt Col A. S. Chaudhari Vs. Union of India & Ors. decided on 09.01.2015,* had taken a the different view from the view taken by the Court No.2 in Col G.S. Ahluwalia's case. However, in Chatwal's order there is no mention of the fact that finding two conflicting judgments, i.e., G.S. Ahluwalia's case and A.S. Chaudhari's case the Chairperson, referred the matter to the Larger Bench in the case of OA 590/2014, Col Ashok Mishra, SM vs UOI & Ors. Before the matter could have been considered by the Larger Bench to resolve the conflict between the above two orders of the coordinate Benches of the Tribunal rendered while interpreting Rule 6 of the (Procedure) Rules, 2008, the Hon'ble Delhi High Court in *WP (C) No.186 of 2015 Lt Col A.S. Chaudhari*

Vs. Union of India & Ors., (wherein the Court No.3's decision given in the case of Col A.S. Chaudhari was challenged), in a Division Bench ruling of Delhi High Court set aside the Court No.3's order rendered in Lt Col A.S. Chaudhari's case. This fact was brought to the notice of the Larger Bench of the Tribunal, upon which the Larger Bench (by us) in the case of OA 590/2014 Col Ashok Mishra, SM vs UOI & Ors vide order dated 22.04.2015, dropped the question of interpretation of the Rule 6 because of the conflicting judgment delivered by the Bench of Court No.3 of the Tribunal in the case of Lt Col A.S. Chaudhari which was set aside by the Hon'ble Delhi High Court.

4. The same coordinate Bench of Court No.3, after setting aside of its own order delivered in the case of Lt Col A.S. Chaudhari by the Hon'ble Delhi High Court, again took up the same issue for consideration in the case of Brig HMS Chatwal and after considering several judgments of Hon'ble Supreme Court including the judgment delivered by the Constitution Bench of the Hon'ble Supreme Court in *Atma Ram Vs. State of Punjab (AIR 1959 SC 519) and other cases; Union of India Vs. Raghubir Singh (AIR 1989 SC 1933), Sundarjas Kanyalal Bhathija and Ors. Vs. Collector, Thane [1989 (3) SCC 396] and lastly, the judgment of the Hon'ble Supreme Court delivered in the case of [A.R. Antulay Vs. R.S. Nayak, AIR 1988 SC 1531]* reiterated the same view as was taken in Lt Col A.S. Chaudhari's case, and again took a different view then the earlier decision of the coordinate Bench of the Tribunal given in the case of Col G.S. Ahluwalia's case,

as well as in spite of the fact of setting aside of the view taken in the case of Lt Col A.S. Chaudhari of the same Bench by the High Court, the same bench of Court No. 3, on the basis of the judgment of the Supreme Court, delivered in the case of Madras Bar Assocation Vs UOI (2014) 10 SCC1, held that since the Tribunal in the real sense is substitution of the High Court, therefore, the Tribunal can invoke concept of forum convenience and, held as under :-

> *"15. Since the jurisdiction conferred on this Tribunal under Section 14 of the Act, has hitherto been exercised by the High Court only, it is in the real sense a tribunal substituting the High Court (See Madras Bar Assn. V. Union of India, (2014) 10 SCC 1). In this view of the matter, the contention that Tribunal cannot invoke doctrine of forum conveniens deserves to be rejected as apparently misconceived ....."*
>
> *(emphasis supplied)*

Thereafter, in the case of Brig HMS Chatwal, Bench took note of the facts of said cases and held, as under :-

> *"16. Indisputably, on the respective dates of filing of the OAs, none of the petitioner was posted within the territorial jurisdiction of this Principal Bench and as pointed out already, except the passing of order rejecting the corresponding statutory complaint, the remaining part of cause of action had arisen within the territorial jurisdiction of Chandigarh Bench of this Tribunal only. The concept of 'permanent residence' is of no relevant as only clause (ii) of Sub-rule (1) of Rule 6 (above) is applicable to both the cases.*
>
> *(emphasis supplied)*
>
> *17. Applying the well settled position, thus explained, to the facts of the cases, it can easily be concluded that even though it may be said that miniscule part of cause of action had arisen within the jurisdiction of the Tribunal yet, that would not, by itself, constitute to be the determining*

factor compelling the Court to entertain the matter. Taking into consideration the concept of the forum conveniens, we are of the considered opinion that none of the OAs is entertainable by the Principal Bench."

(emphasis supplied)

5. In view of the above decision in the case of Brig HMS Chatwal [and Col VJS Variach], the Bench of the Tribunal ordered the return of the OAs to the respective petitioners for presentation to the proper Bench.

6. The conflict in two orders, one rendered in Col G.S. Ahluwalia and another, rendered in the case of Brig HMS Chatwal is apparent from the face of the orders. Therefore, the mater requires consideration of the Larger Bench.

7. Consequently, the parties were heard at length. We have considered the judgments referred above, the judgments considered in both the cases i.e., considered in the case of Col G.S. Ahluwalia and considered in the case of Brig HMS Chatwal's cases. We also considered the judgments relied upon by Mr. R. Balasubramanian, learned Additional Solicitor General and the Armed Forces Tribunal Act, 2007, its Scheme, the jurisdiction of the Tribunal, Rule 6 of the Armed Forces Tribunal (Procedure) Rules, 2008, specifically along with other rules.

8. First and foremost the question which came up for our consideration is whether, any coordinate Bench can take a different

view from a view taken by an earlier Bench? This issue may not detain us for a long for a simple reason that, the subsequently rendered order in the case of Brig HMS Chatwal itself, on the basis of the Supreme Court judgments took the view that the Coordinate Bench cannot take a different view than taken by an earlier Coordinate Bench. In spite of taking note of the well settled legal position, Court No. 3 of the Principal Bench of the Tribunal took a different view than the earlier coordinate Bench's decision. For this issue, the Bench very carefully looked into the judgments rendered by the Hon'ble Supreme Court since 1959, like the Constitution Bench Judgment of the Hon'ble Supreme Court delivered in the case of Atma Ram Vs. State of Punjab; AIR 1959 SC 579 and in the case of Raghubir Singh (supra); *Sundarjas Kanyalal Bhathija and Ors. Vs. Collector, Thane [1989 (3) SCC 396] and in the case of [A.R. Antulay Vs. R.S. Nayak, AIR 1988 SC 1531].* Consistent view of the Hon'ble Supreme Court from the beginning and till today is well-known that, where Benches of equal strength are not in agreement, the better course would be to refer the matter to a Larger Bench, otherwise, the courts are placed under the embarrassment of preferring one view to the another. Then as noted from the decision of **Raghubir Singh's** case, that :-

> *"The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decision, and enables an organic development of law, besides providing assurance to the individual as to the consequence of transaction forming part of his daily*

affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a court." (emphasis supplied)

9. Thereafter in the case of Brig HMS Chatwal itself, the Bench noted the observation given in the case of Sundarjas Kanyalal Bhathija and Ors. and quoted the following para in their order:-

> *"In our system of judicial review which is a part of our constitutional scheme, (we hold) it is the duty of Judges of superior courts and tribunals to make the law more predictable. The question of law directly arising in the case should not be dealt with apologetic approaches. The law must be made more effective as a guide to behavior. It must be determined with reasons which carry convictions within the courts, profession and public. Otherwise, the lawyers would be in a predicament and would not know how to advise their clients."*
>
> *(emphasis supplied)*

Hon'ble Apex Court further observed that:-

> "Subordinate courts would find themselves in an embarrassing position to choose between the conflicting opinions. The general public would be in dilemma to obey or not to obey such law and it ultimately falls in to dispute". The position of law settled at least since 1959, or is clear from the view expressed in the case of Atma Ram by the Apex Court, yet in Brig HMS Chatwal's case conflicting view has been taken and the issue was not referred to a larger Bench.

10. We need not therefore search other authorities on the question, whether a coordinate Bench can take a contrary view than taken by the earlier decision given by another coordinate Bench? The answer is given in Brig HMS Chatwal's case itself that the coordinate Bench of Court No.3, in the case of Brig HMS Chatwal, should not have declared the view contrary to the view expressed in earlier order

passed by the coordinate Bench in the case of Col GS Ahluwalia. The subsequent coordinate Bench certainly had jurisdiction to form an opinion contrary to the view expressed by earlier Coordinate Bench in their order only for the purpose of referring the issue to a larger Bench. In the order passed in Brig HMS Chatwal's case, there is no mention of the case of Col GS Ahluwalia. We presume that it may be by inadvertence only. A contrary view to view expressed in Col GS Ahluwalia case was expressed by the same Bench in Lt Col AS Chaudhari's case after considering the order passed in Col GS Ahluwalia's case and there is reference of Lt Col AS Chaudhari's case in the order of Brig HMS Chatwal's case, therefore, we presume that inadvertently, only there is no reference of Col GS Ahluwalia's case in Brig HMS Chatwal's case.

11. In addition to the above, the similar view to the view expressed in Brig HMS Chatwal's case, expressed by the same Bench earlier in the case of Lt Col AS Chaudhari, was over ruled by the Division Bench of the Delhi High Court. It was therefore, all the more necessary for the Bench, which decided Brig HMS Chatwal's case, to refrain from taking the same view which was set aside by the Delhi High Court.

12. The plea was not available to the Bench of the Tribunal in the case of Brig HMS Chatwal, that the Division Bench of the Delhi High Court in the case of Lt Col A.S. Chaudhary, itself did not follow the rule, that the coordinate Bench cannot take the contrary view than

expressed by another coordinate Bench and, therefore, in Brig HMS Chatwal's case the Bench itself can follow the procedure, which according to the Bench, was wrongly adopted by the Division Bench of the Delhi High Court in the case of Lt Col A.S. Chaudhary.

13. At this juncture, it would be appropriate to mention here that finding the conflicting view expressed in the case of Lt Col AS Chaudhary when related to the view expressed in the case of Col GS Ahluwalia, the matter was already referred to the Larger Bench, but dropped only because of setting aside of a contrary view in A.S. Chaudhari's case. In this situation also it would have been appropriate for the Bench, (the Bench which decided the Brig HMS Chatwal's case), to refer the issue to the Larger Bench instead of declaring a contrary view to the view expressed in Col GS Ahluwalia's case.

14. Be it as it may be, the view expressed in the case of Brig HMS Chatwal cannot be accepted to be binding precedent in view of the earlier view expressed by the coordinate Bench of the Tribunal in the case of Col GS Ahluwalia, and in view of the judgments of the Hon'ble Supreme Court delivered in the case of ***Atma Ram, Raghubir Singh, Sundarjas Kanyalal Bhathija & Ors.(supra)*** as well as in the light of decision given in the case of *Union of India Vs Colonel G.S. Grewal* delivered by the Hon'ble Supreme Court reported in (2014) 7SCC 303, wherein, the Hon'ble Supreme Court after considering the decisions given in the cases; ***Sub Inspector***

Roop Lal Vs Lt Governor (2000) 1SCC 644, Bhagwan vs Ram Chand, AIR 1965 SC 1767, set aside the order of the Chandigarh Bench of the Tribunal which was rendered in conflict with the order passed by the coordinate Bench (the Principal Bench of the Tribunal) and remanded matter back to the Larger Bench for deciding the issue.

15. Since the controversy will not set at rest by holding, as held above, (because of the reason that, earlier also the Larger Bench dropped the reference because the Hon'ble Delhi High Court set aside the order rendered in LT Col AS Chaudhary's case), yet, the same conflicting order has come in Brig HMS Chatwal's case by the same Bench. Consequently, we are required to address the issues; the ambit, scope and limits of the Rule 6 of the AFT (Procedure) Rules, 2008.

16. Before proceeding further we would also like to quote the same observations of Hon'ble Supreme Court given in the case of A.R. Antulay, which is quoted by the Bench in the case of Brig HMS Chatwal :-

> *"To err is human, is the oft-quoted saying: Courts including the Apex one are no exception. To own up the mistake when judicial satisfaction is reached does not militate against its status or authority. Perhaps it would enhance both* ***{A.R. Antulay v. R.S. Nayak, AIR 1988 SC 1531 referred to}***.

Above proposition, applies to the case of Brig HMS Chatwal's case.

17. We may recapitulate that in both the orders, in Col GS Ahluwalia and in the case of Brig HMS Chatwal, both the Benches, in addition to Rule 6, considered the plea of forum convenience. In GS Ahluwalia's case the Bench of the Tribunal observed that "the principle underlining ***forum convenience*** means it is obligatory on the part of the Court to see the convenience of all the parties before it." Thereafter, in the case of Col GS Ahluwalia it has been observed, that said doctrine is a relevant factor but is not a determining factor while deciding the question of jurisdiction. This being only a relevant consideration is not decisive factor. Therefore, it is not a rule of thump that this principle has to be applied in all cases. It will depend upon the facts and circumstances of each case. The Courts in such situations will have to examine this principle in the perspective of ***dominus litis*** which implies that a party who makes a decision to file a suit has a right to choose his forum. When the principle of ***forum inconveniences*** is applied, the principle object is to see the convenience of both the parties.

18. In the case of Brig HMS Chatwal while considering the doctrine of ***forum conveniens*** the subsequent Bench observed in para 15 as under :-

> *"It may be pointed out here that as many as eight regional Benches of this Tribunal have been established across the country with a view to providing speedy and less expensive dispensation of justice to the serving as well as retired Members of all the three Armed Forces of the Union residing in various parts of the country whereas Headquarters of all the three Services are located at New*

Delhi only. Obviously, all the complaints, representations etc. against various service wrongs are dealt with and decided in New Delhi only. Needless to say that if the doctrine of forum conveniens is not invoked, all the petitions under the Act would have to be entertained by the Principal Bench only and this would render all other Benches defunct. Such a situation was certainly not contemplated by the law makers."

Thereafter, in the case of Brig HMS Chatwal it has been held in para 17 that,

".....even though it may be said that a miniscule part of cause of action had arisen within the jurisdiction of this Tribunal yet, that would not, by itself, constitute to be the determining factor compelling the Court to entertain the matter."

Therefore, it is clear that in the two orders, one in Ahluwalia's case and another in Brig HMS Chatwal's case concept of ***forum convenience*** has been applied opposite to each other.

19. In the orders in the above referred two cases of the Tribunal, earlier Bench the view is that, the litigants can take benefit of all the clauses of the Rule 6 and can avail the remedy at any place including, where even part of cause of action has arisen. Whereas, subsequent decision declared that, the Tribunal can refuse to exercise jurisdiction in appropriate case, even if part of cause of action has arisen within the territorial jurisdiction of the Bench of the Tribunal. In subsequent order, it was also held, that the concept of permanent residence is of no relevance as only clause (ii) of sub rule (1) of Rule 6 is applicable in both the cases (i.e. Brig Chatwal's and

connected case). Therefore, the Rule 6 has been interpreted totally differently by the two Benches of the Tribunal (Both, at Principle Bench of the Tribunal).

20. Hence, while finding out the scope, ambit and limitations of Rule 6, we will consider the concept of **forum conveniences** also.

21. It will be appropriate to first look into the jurisdiction of the Tribunal and it will be helpful to look into the jurisdiction of the High Courts under Article 226 of the Constitution of India because of the reason that the concept of ***forum conveniens*** has been considered by the Courts in India while interpreting the jurisdiction of the High Courts under Article 226. In the case of Brig HMS Chatwal, the reliance has been placed upon the Apex Court Judgment delivered in the case of *Madras Bar Assn. V. Union of India, (2014) 10 SCC 1)* and it has been observed, that the Tribunal is substitute of High Court and, therefore, the Tribunal can invoke doctrine of ***forum conveniens.***

22. Learned ASG Mr. Balasubramanian, vehemently argued and meticulously drew our attention towards the various provisions of the Armed Forces Tribunal Act, 2007 to show us the limits of jurisdiction of the Tribunal, which jurisdiction, according to Ld ASG, is fully controlled and guided by the Rule of law and Tribunal has jurisdiction, only within the framework of law and has no jurisdiction as is available to the High Courts under Article 226 of the Constitution of India.

23. It will be appropriate to look into the Tribunal's jurisdiction. The Tribunal is defined in clause (q) of Section 3 and Section 4 of the AFT Act, 2007. It says that :-

> ***"3(q)**-Tribunal means Armed Forces Tribunal established under Section 4.*
>
> ***4. Establishment of Armed Forces Tribunal**.- The Central Government shall, by notification, establish a Tribunal to be known as the Armed Forces Tribunal to exercise the jurisdiction, powers and authority conferred on it by or under this Act."*

24. Therefore, the Tribunal has jurisdiction, powers and authority which is conferred upon the Tribunal by the Act of 2007 or under the Act of 2007. We are in full agreement with the submission of Learned ASG that Tribunal has such jurisdiction as conferred by law only. The civil courts have jurisdiction, as per Section 9 of the Code of Civil Procedure, 1908, to try all suits of civil nature except suits which are excluded by any law. Both the Tribunal's and Civil Court's jurisdiction is exercised in accordance with law and only as prescribed by law. This jurisdiction is called ordinary jurisdiction. This jurisdiction is neither extraordinary nor discretionary jurisdiction. The Tribunal and the Civil Court as well as High Courts, while exercising civil jurisdiction in civil cases are bound by the laws of procedure. Neither High Court, nor Tribunal nor civil courts can convert ordinary jurisdiction to extraordinary jurisdiction and also

cannot convert statutory jurisdiction into discretionary jurisdiction. It will be useful to rely upon the judgment of Hon'ble Supreme Court delivered in the case of Shiv Kumar Sharma vs Santosh Kumari reported in 2007 (8) SCC 600.

> *"26. In England, the court of equity exercises jurisdiction in equity. The courts of India do not possess any such exclusive jurisdiction. The courts in India exercise jurisdiction both in equity as well as law but exercise of equity jurisdiction is always subject to the provisions of law. If exercise of equity jurisdiction would violate the express provisions contained in law, the same cannot be done. Equity jurisdiction can be exercised only when no law operates in the field.*
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> *27. A court of law cannot exercise its discretionary jurisdiction dehors the statutory law. Its discretion must be exercised in terms of the existing statute."*

25. Another jurisdiction is of the High Court, and relevant for our purpose is, as given to the High Court under Article 226 of the Constitution of India. The jurisdiction of the High Court under Article 226 is not ordinary jurisdiction, having bounds and limits prescribed by law but is, plenary in nature and is not limited by any other provision of Constitution and also extra-ordinary, equitable and also discretionary jurisdiction. For this proposition we are guided by the law declared by the Hon'ble Apex Court in the case of **Kumari Shrilekha Vidhyarthi vs State of UP 1991 (1) SCC 212** and again considered in the case of **Joshi Technologies vs UOI & Ors reported in JT 2015 (5) 372**. The relevant para from the judgment of Kumari Shrilekha (supra) is quoted here:-

> *"28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the*

Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power [See: Whirlpool Corporation vs. registrar of Trade Marks, Mumbai & Ors. [1998 (8) SCC1]. And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the court thinks it necessary to exercise the said jurisdiction."

Therefore, keeping in mind, the difference in jurisdiction of High Court and other statutory Courts. We are proceeding to consider the subject and the issue referred to the Larger Bench.

26. The Act itself has vested the Tribunal with the two different jurisdictions; one, in civil matters, which is conferred by Section 14 of the Act of 2007 and, another, in criminal matters, obviously, in the matters of appeals arising out from the Court Martial proceedings which appeals lies under Section 15. The Armed Forces Tribunal is unique, inasmuch as, that this Tribunal has jurisdiction not only of civil nature but also in the criminal matters also. Be it as it may be, as per Section 14 the Tribunal has, "all the jurisdiction, powers and authority, exercisable by all the courts (except the Supreme Court or a High Court exercising jurisdiction under Article 226 and 227 of the Constitution)". This jurisdiction is also restricted to the dispute in relation to only "service matters." "Service matters" have been defined in clause (o) of Section 3 of the Act of 2007. Ld ASG Mr.

Balasubramanian drew our attention to sub-section (3) of Section 14 and submitted that the Tribunal has jurisdiction to entertain the Application (service matters), provided the Tribunal forms an opinion that it is a fit case for adjudication by it, and where the Tribunal is not so satisfied, it may dismiss the Application after recording its reasons in writing. Therefore, the ***forum conveniens*** concept can be invoked in appropriate case where the Bench of the Tribunal finds that though there is a part of cause of action within the jurisdiction of such Bench of the Tribunal yet, the Bench may exercise its discretion, not to admit the matter brought before the Bench.

27. Learned counsel for the Union of India then drew our attention towards the jurisdiction of the Tribunal under Section 15. The language in this Section is different and the Tribunal has been vested with the jurisdiction, power and authority to entertain, hear and decide the appeals against any order, decision, finding or sentence passed by a Court Martial or any matter connected therewith or incidental thereto. The different languages used in Section 14 & 15 coupled with sub-section (1) of Section 21 and the object of the Act, suggests that, for availing remedy under Section 14 obviously, in service matters, the Tribunal cannot ordinarily admit an application, unless the applicant had availed all the remedies available to him under the Army Act 1950, Navy Act, 1957 or Air Force Act, 1950, and under the respective Rules and Regulations made there under. Learned ASG Mr. Balasubramanian submitted, that in Section 21, the

only word used is "application" and the word "appeal" has not been used. Therefore, in a service matters one is required to exhaust all available remedies under the three Armed Force Acts. But such a requirement is not there for the appeal under Section 15. Therefore, the procedure of the Tribunal is different for service matters and in the matters arising out from the Court Martial order, decision, finding or sentence. This submission of the learned ASG is only to show us that, the some administrative orders which are required to be passed by the HoD or the Govt. at Delhi in the cases which originated elsewhere, in such cases, no cause of action can occur at Delhi merely because of passing of order at Delhi. This issue will be ancillary only. Reason is that, in spite of different languages used in Sections 14 and 15 of the Act of 2007, territorial jurisdiction is the core issue before us and Rule 6 is not framed differently for Section 14 and Section 15. The core issue is whether, territorial jurisdiction of the Tribunal is as prescribed by law or is discretionary also?

28. In sum and substance, Ld. ASG tried to convince us, that the Bench of the Tribunal has discretionary jurisdiction and, therefore, can apply the concept of ***forum conveniens*** and consequently, in appropriate case may refuse to entertain the matter brought before it even though legally such matter could have been brought before the particular Bench of the Tribunal.

29. Contesting the issue, learned counsel for the applicants, the private parties, Shri Sukhjiner Singh and Shri IS Singh with the help

of the same provisions, which have been relied upon by the learned counsel for UOI, submitted, that the Tribunal has no discretionary jurisdiction but has the jurisdiction vested with it by the Act of 2007 and the jurisdiction of the Tribunal and its exercise cannot be compared with the jurisdiction of the High Court under Article 226 of the Constitution of India. The legal right given to the litigant by the Act cannot be taken away by applying the principle of *forum conveniens* or in the name of exercise of discretion of the Bench of the Tribunal. Learned counsel for the private parties vehemently submitted, that the Rule 6 is unambiguously clear and needs no help of any other theory, principle or concept, other than, what has been expressly given in the language of Rule 6. The external help, or in the name of meaningful reading of the statute, or what was the aim and object of the legislature in enacting the Act of 2007, or Rule 6 of the Rules of 2008 are not relevant for interpretation of the Rule 6. Even if, aims and object for enacting AFT Act, 2007 and for framing Rule 6 differently, the case as is in Section 20 CPC or in Article 226 (2) of the Constitution of India, even then only consideration relevant for deciding the issue is the convenience of the applicant only. According to learned counsel for the respondents, the view expressed in the case of Col GS Ahluwalia also took note of the concept of ***forum conveniens***. The ***forum conveniens*** looks towards the convenience of the parties. Whereas, Brig HMS Chatwal has been decided on the basis, as though ***forum convenience*** is a concept to find out the Tribunal's convenience. Even as per the aims

and object of the Act of 2007, law looks towards convenience of the applicant, much more than the convenience of the mighty respondent- the Union of India. Though concept of *forum conveniens* cannot be invoked in Armed Forces Tribunal, yet if it is applied, than the convenience of Tribunal or even respondents' convenience is absolutely irrelevant. Looking for convenience for Tribunal or respondent will kill the soul of the Rule 6 which has been enacted to see only convenience of private parties, i.e. only applicants before the Tribunal.

30. We considered the submissions of learned counsel for the parties on merits of the issue i.e., on the question of interpretation of clause (i) and (ii) under sub-rule (1) and sub rule (2) of Rule 6 of the AFT (Procedure) Rules, 2008.

31. It is essential to first examine nature of the jurisdiction of the Tribunal. It is also essential to compare jurisdiction of the Tribunal with the jurisdiction of a civil court as well as with the jurisdiction of the High Court under Article 226 of the Constitution of India.

32. In one of the judgments, the Tribunal's order delivered in OA 151/2009 M Sep Jagat Singh Vs UOI and others and connected matters decided by the common order dated 23 April 2012 by the Armed Forces Tribunal, Principal Bench, New Delhi, in the fact of said case, declared that any order passed on representation under Section 164 (2) of the Army Act or corresponding Section of the Air Force Act or Navy Act will not constitute the "cause of action". The

Larger Bench is not addressing on the issue whether such facts constitute the cause of action or not but is addressing to the specific issue related to interpretation of Rule 6 as referred above. Further, it will be worth quoting paras 9 and 10 which will guide us also in view of the fact that a number of Supreme Court judgments have been considered in the case of M Sep Jagjit Singh, which guided the courts and the Tribunal in the matter of interpretation of statute and which prohibits the courts and Tribunal to interpret the law otherwise then as written in certain circumstances. Paras 9 & 10 of the order of M Sep Jagjit Singh which are very relevant and very aptly considered by the Principal Bench of the Tribunal in the case of M Sep Jagjit Singh in para 9 and 10 of the above order are as under:

> *9. It is urged by the learned members of the Bar that in construing a statutory provision the first and foremost rule of construction is that of literal construction. All that court has to see at the very outset is, what does the provision say? If the provision is unambiguous and if from that provision the legislative intent is clear, the other rules of construction of statue need not be called into aid, otherwise rules of construction of statutes are called in aid only when the legislative intention is not clear. It is undoubtedly a settled legal position that the function of the court/Tribunal is to ascertain the meaning of the words used by the Legislation. [See* ***Hiralal ratanlal Vs. State of U.P., (1973) 1 SCC 216 (Para 22); New Piece Goods Bagah co. Vs. CIT, 1950 SC 165, Arvind Mohan Sinha vs Amulya Kumar, (1974) 4 SCC 222; CIT Vs Ajax Products Ltds, Air 1965 SC 1358; State of Assam Vs. D.P. Barma, AIR 1969 SC 831; M.V. Josh Vs. M.Y. ShimpuM***

aur 1961 s.c. 1404; Collector Customs Vs Dig Vijay Sinhji Spring and Weaving Mills, AIR 1961 SC 1549; ram Kiswhan Vs. State of Delhi, AIR 1956 SC 476 CIT Vs G. Hyatt (1971) 1 SCC 466; Amar Singh Vs. State of Rajasthan, AIR 1955 SC 504 at 526; Nagan corporation vs employees, AIR 1960 S.C. 675 (Para 9)]. *Apex Court in the case of Union of india Vs Deoke Nandan Aggarwal (1992) Supp. (1) of SCC Page 323 at paras 14 observed that:*

> *It is not the duty of the court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The court cannot add words to a statue or read words into it which are not there. Assuming there is a defect or on omission in the words used by the legislature the court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself.*

10. Thus the courts are bound by the mandate of Legislature once it has expressed its intention in words, which have a clear significance and meaning, the court is precluded from speculating. They would not be justified in straining the language of the statutory provision as to ascribe the meaning which cannot be warranted by the words employed by the Legislature. It is wrong to first introduce an ambiguity by giving certain expression on a particular meaning and then to make an attempt to emerge out of semantic confusion and obscurity by having resort to the presumed intention of the Legislature.

Keeping in mind above principle, we are proceeding to decide the issue referred to the larger Bench

33. The relevant portion of Section 14(1), 14(2), 14(3) & Section 15 are quoted herein below :-

> *"14. **Jurisdiction, powers and authority in service matters - (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.*
>
> ***14(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.*
>
> ***14(3)**- On receipt of an application relating to service matters, the Tribunal shall, if satisfied after due inquiry, as it may deem necessary, that it is fit for adjudication by it, admit such application; but where the Tribunal is not so satisfied, it may dismiss the application after recording its reason in writing."*

Relevant part of Section 15 is as under :-

> **"15. Jurisdiction, powers and authority in matters of appeal against court martial.-**
>
> *(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 under this Act in relation to appeal against any order, decision, finding or sentence passed by a court martial."*
>
> *(2)Any person aggrieved by an order, decision, finding or sentence passed by a court martial may prefer an appeal in such form, manner and within such time as may be prescribed."*

34. From a bare perusal of Section 14 & 15 read with Section 4, it is clear that, the Tribunal has such jurisdiction only, which has been conferred upon the Tribunal **by** *the Act* of 2007 or **under** the Act of 2007. Under the Act of 2007 obviously means, under Rules prescribed to regulate work of the Tribunal.

35. Article 226 is entirely different from Sections 14 and 15 and Rule 6, which is as under :-

> *"**226. Power of High Courts to issue certain writs-***
>
> *(1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any purpose.*
>
> *(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person "**may**" also be exercised by any High Court exercising jurisdiction in relation to the territories within which the **cause of action, wholly or in part**, arises for the exercise of such power, notwithstanding that the seat of such Government or authority of the residence of such person is not within those territories."*

Section 9 CPC :- Courts to try all civil suits unless barred.-

> *"The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which there cognizance is either expressly or impliedly barred."*

36. Undisputedly, in contrast to the statutory jurisdiction conferred upon the Armed Forces Tribunal ***by*** the or **under** the Act of 2007 and Rules framed thereunder, the jurisdiction of the High Court under Article 226 is entirely different. In contrast to the statutory jurisdiction, having limit of laws over the Tribunal, the jurisdiction given to High Court, under Article 226, is plenary in nature, **extra-ordinary, equitable** and **discretionary** jurisdiction. For this, we may again refer the judgment of the Hon'ble Supreme Court delivered in the case of **Kumari Shrilekha Vidhyarthi (supra)** and **Joshi Technologies (supra).** Therefore, the High Court may exercise it's discretion, in facts of a case, and can refuse to entertain any writ petition filed under Article 226, even when the High Court or Bench of the High Court has jurisdiction to entertain the writ petition. The discretionary jurisdiction of the High Court under Article 226 is not confined to territorial jurisdiction but is much wide. The High Courts not only can refuse to entertain petitions on the ground of ***forum conveniens*** but also has jurisdiction to refuse to entertain the petition for several other reasons also like; availability of effective alternative remedy, the petitioner is guilty of delay and latches though there is no limitation prescribed for approaching the High Court in writ jurisdiction, because of the conduct of the petitioner and for very many other reasons. It is also not necessary for the High Court to entertain a writ petition only because the order challenged in the Writ Petition is illegal. The High Court may not interfere in such mater if such interference would be against the equity, or it be not just and

appropriate in the facts of the case. The discretionary jurisdiction of the High Court is not only negative. It is positive also. In addition to above, the High Court may entertain the writ petition even when there is a efficacious alternate remedy is available, like, in the cases, where there is a case of violation of principles of natural justice, the order impugned was passed unauthorized us and without authority of law etc. The High Court also has jurisdiction to entertain PIL, at the instance of any person as well as, *suo moto* also. The object of giving wide discretionary jurisdiction to High Court by the Constitution has well-known reasons and, therefore, the Article 226 has been interpreted by the Hon'ble Supreme Court as one of the basic feature of the Constitution.

37. While enacting the Armed Forces Tribunal Act, 2007, expressly the jurisdiction of Article 226 or even similar (jurisdiction), to that has not been given to the Armed Forces Tribunal which is clear from Sections 14 and 15 itself. Otherwise, also in view of the judgment of the Hon'ble Supreme Court, the power of High Court under Article 226 cannot be given to any other Court or Tribunal.

38. It is true that in the case of Madras Bar Association (supra), Hon'ble Supreme Court held, that the Government can by legislation create the substitute of Courts and the substituted Court/Tribunal shall be at par with the Court which sought to be substituted. Therefore, in the case of Brig HMS Chatwal, the Bench may have rightly observed that "it is in the real sense a Tribunal substituting the

High Court ***(See Madras Bar Association Vs. Union of India, 2004 10 SCC(1).”*** But at the same time, missed to notice the difference of the jurisdiction given to the Tribunal with that of the High Court under Article 226, which is left to the High Court only. The judgment of Madras Bar Association cannot be read to mean that the Tribunal is a High Court for all purposes and particularly, for the purpose of Article 226 of the Constitution of India also.

39. So far as, status and in all other respects, the Tribunal may be the substitute of High Courts but for the purpose limited by the Act of 2007. The High Court, when not exercising its plenary writ jurisdiction, it is also bound to exercise the jurisdiction, as is applicable for the subject matter. For example, the High Court while exercising jurisdiction under Section 96 CPC or Section 100 CPC, that is appellate jurisdiction in appeals against decree passed by civil court, is bound by the procedure prescribed under Code of Civil Procedure and cannot exercise discretionary jurisdiction against statutory provisions. Same is position in all other civil and criminal matters if brought before the High Court in regular appeals and not in writ jurisdiction. In our opinion, if Courts follow the rule of law, when the law covers the subject in clear term, and clear in language then courts have no option but to follow law and the procedure prescribed by law., Then it will be more certain for the litigants and the advocates, for this view, we are well guided by the law laid down by

the Apex court in the case of **sundaryas Kanyalal Bhathija report in 1989 (3) SCC 396 (supra).**

40. The core question for deciding the issue for interpreting Rule 6 is that, whether the Act of 2007 or Rule 6 of the Rules of 2008 has given any discretionary jurisdiction to the Tribunal so as to empower the Tribunal to refuse to entertain the matter brought before any Bench of the Tribunal which has jurisdiction to entertain, hear and decide. In our opinion, neither Section 14 nor Section 15 nor sub-section (2) of Section 14 nor Rule 6 of the Rules of 2008 gives any discretionary jurisdiction to the Tribunal in the matter of entertaining the lis brought before the Tribunal's Benches.

41. We may first look into Rule 6. Rule 6 of the Armed Forces Tribunal (Procedure) Rule, 2008 is as under :-

> *"**Rule 6. Place of filing application**.-*
>
> *(1) An application shall ordinarily be filed by the applicant with the Registrar of the Bench within whose jurisdiction –*
>
> *(i) the applicant is posted for the time being, or was last posed or attached; or*
>
> *(ii) Where the cause of action, wholly or in part, has arisen:*
>
> *Provided that with the leave of the Chairperson the application may be filed with the Registrar of the Principal Bench and subject to the orders under section 14 or section 15 of the Act, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter.*
>
> *(2) Notwithstanding anything contained in sub-rule (1), a person who has ceased to be in service by reason of his retirement,*

dismissal, discharge, cashiering, release, removal, resignation or termination of service may, at his option, file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application."

42. The Rule 6 says that an application shall ordinarily be filed by the applicant within whose jurisdiction :-

"(1) the applicant is posted for the time being;

(2) or was last posted;

(3) or attached;

(4) or where the cause of action wholly;

(5) or in part has arisen."

Since in large number of cases, dispute is raised with respect to clause (ii) of sub rule (1) of Rule 6, (i.e., point No. 5 above) therefore, we will first consider the ambit of clause (ii) of sub rule (1) of Rule 6 of the Rules of 2008. For convenience we may quote again clause (ii) of sub rule (1) of Rule 6, which is as under :-

"(ii) <u>where the cause of action wholly or in part has arisen</u>"

Similar provision for other statutory courts to which Code of Civil Procedure is applicable is given in Section 20 of the CPC. Relevant part of the Section 20 is as under :-

"**20. Other suits to be instituted where defendants reside or cause of action arises.**—Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises."

In our opinion Rule 6(1)(ii) is comparable and not only *peri materia* but verbatim same with Sec 20 (c) CPC. It appears that various judgments rendered and considered in the two conflicting orders, dealt with the High Court's power with reference to High Court's writ jurisdiction and territorial jurisdiction as vests in the High Courts by virtue of Article 226 and the clause (2) of Article 226. At this place we would like to quote again clause (2) of Article 226, which is as under:-

> *"226(2). The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority of the residence of such person is not within those territories."*

43. In Section 20 (c) CPC and in Sec 6(1) (ii) AFT Act, 2007 the verbatim same language has been used while defining territorial jurisdiction of the civil court and the Tribunal respectively. But for the High Court, with a marked difference in Article 226. The difference is

apparent from the use of the words "may also be exercised by the High Court exercising the jurisdiction in relation to territories within which the cause of action, wholly or in part, arises for exercise of such power". The words "may also be exercised" is in consonance with the jurisdiction of the High Court under Article 226, which is the plenary jurisdiction and is not limited by any other (Provision) of the Constitution as well as is a discretionary jurisdiction.

44. Therefore, under Article 226, the High Court exercises, **extra ordinary, equitable discretionary** jurisdiction. Since High Court's inherent jurisdiction under Article 226, itself is discretionary jurisdiction, therefore, in consonance with the said jurisdiction, in the matter of issue related to territorial jurisdiction also, High Courts are vested with discretionary jurisdiction, and not ordinary, civil or criminal jurisdiction given by specific law, nor limited by even any provision in Constitution. In contrast to the word 'may" as used in Article 226(2) the word "shall" has been used in sub rule (1) of Rule 6 of the Rules of 2008. Similar to Rule 6 same word "shall" is used in Section 20 CPC. In Rule 6(1), after the word "shall", word and language used is ".....ordinarily be filed by the applicant with the Registrar or Bench within whose jurisdiction.....". The word "ordinarily be filed, by the applicant" cannot be confused with any discretionary jurisdiction of the Tribunal. This pertains to choice of the applicant. The words "ordinarily be filed", were essential so as to avoid the conflict with the proviso appended to the sub rule (1) of Rule 6 as proviso allows the filing of the matter before the Principal Bench of the Tribunal with the

leave of the Chairperson. Therefore, in exception to the other clause, in sub rule (1) and sub rule (2) the applicants before the Tribunal have the right to file the matters before the Bench of the Tribunal where;

(1) the applicant is posted for time being, or
(2) was last posted, or
(3) attached; or
(4) where the cause of action, wholly or,
(5) cause of action in part, has arisen

The Bench's territorial jurisdiction is governed by clause (i) and clause (ii) of sub rule (1) and sub rule (2) of the Rule 6. From the language in Rule 6 of the Rules of 2008, it is clear that, law under Sections 14 & 15 as well as Rule 6 has not given discretionary jurisdiction to the Tribunal over the right of applicants in the matter of choice of Bench of the Tribunal. The applicant's statutory right to choose a bench out of many Benches having jurisdiction cannot be taken away by any implied power or jurisdiction, or at the discretion of the Bench which implied power or jurisdiction is in fact not available to the Tribunal.

45. In addition to the above, the sub rule (1) of Rule 6 is also very relevant as well as important. Sub rule (1) of Rule 6 covers, persons who are in service. Such person, at his option, may file lis before the Bench within whose jurisdiction the applicant is posted or was last posted or attached. Sub rule (2) of the Rule 6 apply to the person

who has ceased to be in service by reason of his retirement, dismissal, discharge, cashiering, release, removal, resignation or termination of service. Such person has been given his option to file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application (matter).

46. Clause (i) and (ii) of sub rule (1) of Rule 6 indicate that the legislature took every care to see that the applicants be given every possible liberty to choose an appropriate Bench for redressal of his grievance. This is in total departure from the Sec 20 of the CPC which allows the plaintiff to file suit at the place which is convenient to the defendant. In civil courts, the plaintiff; on the basis of convenience or on the basis of plea of ***forum conveniens*** cannot request the court to permit the plaintiff to file suit at the place of his convenience. Same is the position with the defendant. The defendant cannot take the plea of ***forum conveniens***. Nor the court can refuse to entertain the suit on the concept of ***forum convenience***, if filed because of mere accrual of parts of cause of action within jurisdiction. In civil cases, rule of law has been given preference over any other, including court's discretion and concept like ***forum convenience***. Except change of convenience of beneficiary person, there is all similarity in Sec 20 CPC and the Rule 6. Entire Rule 6 has been framed by keeping in mind the applicant's convenience in total contrast to the century old law, Section 20 of the

Code of Civil Procedure, which takes care of defendant's convenience. The Section 20 protects the interest of defendant and sees that, the defendant may not be obliged to please the plaintiff, therefore, clause (a) and (b) of Section 20 CPC are different from clause (i) of sub Rule (1) of Rule 6. Both, clause (a) & (b) of CPC and clause (i) of Sub rule (1) and Sub rule 2 of Rule 6 we have already quoted for comparison.

47. This comparison is necessary because of the reason that the Courts and Tribunal exercising civil jurisdiction or criminal jurisdiction are bound by the procedure given in the Civil Procedure Code and as prescribed by law for criminal matters in contrast to the procedure appropriate to jurisdiction of any High Court, with no discretionary power to civil court and the Tribunal in giving effect to procedural law. For territorial jurisdiction, the law in CPC and AFT Act, 2007 are same. The said provision i.e. Section 20 CPC has been applied in all courts or in Tribunals throughout India in almost near about 18000 Courts (civil and criminal) and that too, since last more than 100 years. No controversy came before the Civil Courts in interpreting the language "where the cause of action, wholly or in part, has arisen". The concept forum conveniens has not been applied by the Civil Courts governed by Section 20 of the Civil Procedure Code. The rule of law has been given preference, in preference to the rule of convenience which may vary with a person to person and may result into a very chaotic situation, if is allowed in courts or in the Tribunal. Concept of ***forum convenience*** is unheard in criminal

matters. There will be no certainty nor practically it will be possible for the civil courts (or even criminal courts), to cope up with the technical objections of the territorial jurisdiction, if the objections will be allowed to be raised on the basis of concept of ***forum conveniens***. Our above view is not hypothetical, but is based on the sound principle of law as has been recognized in various binding judgments, as well as is also based on facts necessary for deciding the issue, whether rule of law should be given preference or discretionary power of the court, particularly when discretionary power or jurisdiction has not been given to the Courts or to the Tribunal. The rule of law is certain and predictable whereas discretionary power and jurisdiction is unpredictable and uncertain with no stability. It may tend to create confusion, inconsistency and uncertainty. It will be difficult for the litigant to know the law and difficult for Advocates to advise their clients. This will be against the view expressed in the judgment of the Apex Court in the case of ***Sundarjas Kanyalal Bhathija and Ors.*** (supra) wherein it has been held that – Judges and superior courts and Tribunals to make the law more predictable, and held that :-

> *"Otherwise, the lawyers would be in a predicament and would not know how to advise their clients."*

48. When the language of the statute is unambiguous and clear, such language is required to be given effect to as per the literal meaning of the statute. In our opinion, the language, "cause of action, wholly or in part" used in Rule 6(1) in (ii) and in clause (c) of

Sec 20 CPC since, is well-known, over last 100 years plus and already applied in India, no different meaning can be given, one for rules under AFT Act and another, for civil courts. Consequently, same effect is required to be given to the language of Section 20 (c) of the CPC and Rule (1)(ii) of the Rules of 2008. At this place it will be appropriate to take help of the judgment of Hon'ble Supreme Court delivered in the case of ***Shiv Kumar Sharma Vs. Santos Kumari; reported in 2007(8) SCC 60,*** wherein, it has been held, in Paras 26 & 27, that the Courts in India are not the Courts of equity but are Courts of law. Para 26 & 27 are as under :-

> *"**26.** In England, the court of equity exercises jurisdiction in equity. The courts of India do not possess any such exclusive jurisdiction. The courts in India exercise jurisdiction both in equity as well as law but **exercise of equity jurisdiction is always subject to the provisions of law. If exercise of equity jurisdiction would violate the express provisions contained in law, the same cannot be done**. Equity jurisdiction can be exercised only when no law operates in the field.*
>
> ***27.** A court of law cannot exercise its discretionary jurisdiction dehors the statutory law. Its discretion must be exercised in terms of the existing statute."*

49. In our opinion, equity is in built in the law. We need not to find out equity otherwise than from clear and unambiguous laws. This unnecessary exercise questions the law framers wisdom and that in a matter where the validity of such law or even workability of such law is not questioned by any body. The Rule 6 of the Rules of 2008 by conscious application of mind, has been differently framed and there is a complete change in the language of clause (i) of sub rule(1) of

Rule 6 and sub rule(2) of Rule 6 from the language used in Section 20 CPC. The language of Rule 6(i) and Rule (ii) takes care of only the applicant in contrast to the taking care of the defendant/non-applicant. Section 20 of the Civil Procedure Code fully takes care of Defendant and Defendant's interest so that defendant may not be dragged by the Plaintiff to the place of Plaintiff's choice and, therefore, as per clause (a) the suit can be instituted in a Court within the local limits of whose jurisdiction the Defendant, or each of the Defendants where there are more than one, at the time of commencement of suit, actually and voluntarily resides, or carries on business, or personal work for gain. The suit also can be filed as per clause (b) of Section 20 CPC, where there are more than one Defendants, at the time of commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the court is given or the defendants who do not reside, or carry on business, or personally work for gain acquiesces in such Court. Even in the explanation given under Section 20, when the suit is to be filed against any corporation, it also framed to give convenience to the corporation and not as per the convenience of the plaintiff. We have not come across any case where, in a civil case, the plaint was returned for presentation before another court on the concept of the ***forum conveniens***. Still the civil courts with 3 crore cases in India (including criminal cases), faced no difficulty in entertaining the suit as per law, prescribed under Sec 20 of the CPC, and as per the

CrPC did not invoke the concept of *forum conveniens.* If we accept the plea of the Respondents of the *forum conveniens,* then the entire purpose of consciously enacted Rule 6 will loose its importance and it will question the wisdom in enacting Rule 6 as framed in the (Procedure) Rules, 2008 for the AFT.

50. We have already observed that the Tribunal exercised jurisdiction, which is a statutory jurisdiction, and the Tribunal is bound by the procedure of law as given by the statutory rules. The High Court's jurisdiction under Article 226 is plenary, **extra ordinary, equitable and discretionary**. It is true that in the case of Brig HMS Chatwal's case, the case of *Madras Bar Association (supra)* rendered by the Hon'ble Supreme Court was considered and it was held as under :-

> *"The newly created Court/Tribunal would have to be established in consonance with the salient characteristics and standards of the Court which is sought to be substituted."*

So is true but, it ignored the fact that the Tribunal has not been vested with discretionary power or jurisdiction. The substituted court is court of same status and High Court but with the power and jurisdiction, as confirmed by law only. It is true that as per Section 14 & 15 of the Act of 2007, all the jurisdiction, powers and authority exercisable by all the Courts including the High Court have been vested in the Tribunal. Therefore, the Tribunal has all the characteristics and standards of the Courts at par with the High

Court. But this is for a limited purpose only, i.e., to exercise all jurisdiction of the High Court, except jurisdiction under Art 226 and 227 and only for limited jurisdiction given by Sec 14 and 15 of the AFT Act 2007. In Section 14, specifically, the jurisdiction of the High Court under Article 226 and 227 has been kept with the High Court and not transferred to the Tribunal. The equivalence of the Tribunal with the High Court, therefore, is to the extent only to the jurisdiction given under Sections 14 & 15 of the AFT Act, 2002 and not for exercising of other jurisdictions of the High Courts in the matters. Status and stature of the High Court is not reduced because of withdrawal of some of the jurisdiction of High Courts by the Armed Forces Tribunal Act, 2007 nor the Tribunal's status and authority is lower than a High Court because of non transfer of the jurisdiction under Articles 226 and 227. When the High Courts are entertaining other matters, other than under Articles 226 and 227, then also the High Courts are High Courts. In the same way whatever matters are decided by the Tribunal, the Tribunals exercise jurisdiction which was earlier with the High Courts. The Armed Forces Tribunal is not in complete substitution of subordinate courts also. It is substitution for service matters only and Court Martial appeals (earlier before High Courts) under Sections 14 & 15 respectively. By implication the Tribunal cannot exercise the High Court's **extra ordinary or equitable or discretionary jurisdiction** available under Article 226. No other jurisdiction can be invoked while deciding the question of territorial jurisdiction of the Tribunal other than conferred by law.

Further, in our opinion, neither there is need nor there is any justification under Sections 14 and 15 read with Rule 6 to invoke discretionary jurisdiction and take away the legal right of litigants in choosing appropriate Bench of the Tribunal. The judgments rendered by the Hon'ble Supreme Court while interpreting Sec 20 CPC, may be relevant and the judgment interpreting Article 226 and clause (2) of Article 226 are of not much relevance. This is because of the reason of vast difference between the jurisdictions of the Tribunal under Sections 14 & 15 vis-à-vis the Article 226, and furthermore, the vast difference between the Rule 6 of the Rules of 2008 vis-à-vis the Article 226(2) of the Constitution of India.

51. Another aspect in this regard will be that, whether such discretion can be exercised for clause (i) of sub rule (1) of Rule 6, which allows an applicant to file an application before the Bench of the Tribunal; (1) either where the applicant is posted for time being or (2) was posted or (3) attached? Can an applicant be asked to go to the place of last posting or where he is attached in a case the applicant has filed the application within the jurisdiction of the Bench where he is posted for the time being? If an applicant files an application where he is last posted, can he be asked to go to the place where he is posted for the time being or where he is attached? In our opinion, in view of the language of Rule 6, the applicant cannot be asked to go to the place, other than the place, he has filed the

application in accordance with any of the provisions of sub clause (i) and (ii) of sub rule (1) of Rule 6 or as per the sub rule (2) of Rule 6.

52. In our opinion, apart from the fact that, the Rule 6 has given unfettered right to *dominus litis,* to applicant to choose the forum in accordance with any of the clauses of the Rule 6, we are of the considered opinion that the objection of the territorial jurisdiction itself being of technical nature and is not any objection of inherent lack of jurisdiction, a liberal approach should be taken towards entertaining the lis. By this also the Tribunal is not showing any benevolence to the applicant. Our view recognizes the right of the applicant given by Rule 6. The applicant has unfettered right to choose the forum with a weak right of the respondent to object to the territorial jurisdiction, which objection can be waived also by the respondent. Hon'ble Supreme Court in the case ***Hasham Abbas Sayyad & Ors Vs. Usman Abbas Sayyad and Ors.*** **reported in *2007 (2) SCC 355*** held, that a distinction must be made between a decree passed by a Court which has no territorial or pecuniary jurisdiction and a decree passed by a court having no jurisdiction in regard to the subject matter of the suit. Whereas, in the former case, the appellate court may not interfere with the decree unless prejudice is shown, ordinarily the second category of the cases would be interfered with. Section 21 of the Code of Civil Procedure, 1908 doesn't permit the objection to place of suing and objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction unless such

objection is raised at the earliest possible opportunity and if not raised, such objection cannot be entertained by the Appellate or revisional Authority. This we are mentioning only to show that the objection to the territorial jurisdiction is not the objection to the inherent jurisdiction of the Tribunal but is of a technical nature. If we read together, this principle along with the language of Rule 6 read with the language of Section 20 and we can notice the total departure from the well-established legal position as is given in the CPC, while enacting Rule 6, we can safely hold, that a conscious decision was taken while enacting Act of 2007 to see that the applicant be given full liberty to choose the forum and that too while keeping the law for territorial jurisdiction based on part of cause of action as ait is in AFT Act, 2009, as in the CPC.

53. Hon'ble Supreme court in the case of *Ambika Industries Vs. Commissioner of Central Excise; reported in 2007 Vol VI SCC 769,* which is referred in the Brig HMS Chatwal's case also, held as under:-

> *"Although in terms of Article 227 of the Constitution as also Article 226(2) thereof, the High Court would exercise its discretionary jurisdiction as also the power to issue writ of certiorari in respect of the orders passed by the subordinate courts within its territorial jurisdiction or if any cause of action has arisen there within but the same tests cannot be applied when the appellate court exercises a jurisdiction over a tribunal situated in more than one State. In such a situation, the High Court situated in the State where the first court is located should be considered to be the appropriate Appellate Authority. CPC did not contemplate such a situation."*

And also held as under :-

> *"The doctrine of dominus litis or doctrine of situs of the Appellate Tribunal do not go together. Dominus litis indicates that the suitor has more than one option, whereas the situs of an Appellate Tribunal refers to only one High Court wherein the appeal can be preferred."*

Therefore, the jurisdiction of the High Court under Article 226 and 226(2) of the Constitution is different and the Hon'ble Supreme Court recognized again the doctrine of *dominus litis* and held, that the *dominus litis*, i.e., the suitor has more than one option for choosing Bench. We are concerned with the suitor's choice as *dominus litis* in the matter of choosing appropriate forum for redressal of his grievance. Then Hon'ble Supreme Court also held as under:-

> *"Keeping in view the expression "cause of action" used in Article 226(2) of the Constitution, indisputably even if a small fraction thereof accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter though the doctrine of forum conveniens* may also have to be considered."

54. After recognizing the right of the *dominus litis* the Hon'ble Supreme Court held, that even if a small fraction of cause of action accrues within the jurisdiction of the Court (here in this case Tribunal), the court will have jurisdiction in the matter. As we have held, that doctrine of *forum conveniens* is available only when the right of the litigant is subject to discretion of the Court/Tribunal which is not the case here in the procedure for Tribunal. The judgment of **Ambika Industries** (supra) was rendered in the facts of the case of

Ambika Industries. The Ambika Industries case was with respect to the dispute in regard to the jurisdiction of the High Court having regard to the situs of the Tribunal. The Division Bench of Delhi High Court relying on earlier Division Bench judgment delivered in the case **of *Bombay Snuff Pvt. Ltd. Vs. Union of India {(2006 (194) ELT 262 (DEL)}*** held, that the Delhi High Court had no territorial jurisdiction. Therefore, Ambika Industries case is a decision on the facts of the case with clear recognition of the right of the suitor and right of *dominus litis* as well as a declaration that the Court (Tribunal) shall have jurisdiction to entertain the lis if a small fraction of cause of action accrues within the jurisdiction of the Court (Tribunal). This preposition of law is applicable to the Tribunal and concept of *dominus litis* may be applicable to writ jurisdiction of the High Court.

55. In Brig HMS Chatwal's case there is a reference of Special Bench Judgment (five Judges Bench) delivered in the case of In the said case also the Special Bench held, that the writ petition is maintainable even if a miniscule part of cause of action arises within the jurisdiction of the High Court. In our opinion, whether it is under Article 226(2) or under Section 20 CPC or under Rule 6 of the Rules of 2008, one uniform opinion coming from the various judgments is that, <u>even if a miniscule (part of) cause of action arises within the jurisdiction of Court/Tribunal, the Court/Tribunal shall have jurisdiction to entertain the lis</u>. This preposition is, if not confused with the

discretionary jurisdiction of the High Court, then there is no difficulty in holding that the suitor is the *dominus litis* and has the right to choose the forum and the Tribunal may not have jurisdiction to interfere with the right of the suitor.

56. One of the earliest judgments of Hon'ble Supreme Court delivered in the case of *Lt Col Khajoor Singh Singh Vs. Union of India; AIR 1961 SC 532* was considered in the case of Brig HMS Chatwal's case. In Khajoor Singh's case the petitioner's contention was that, the petitioner was holding the substantive rank of Lt Col. in the amalgamated forces, and had the right to continue in service until he attained the age of 53 years but the Government of India issued a letter to retire the petitioner from service with an earlier date. Such Lt Col Khajoor Singh challenged the order in a writ jurisdiction before the High Court of Jammu & Kashmir. The respondents raised the objection of territorial jurisdiction. The Division Bench of Jammu & Kashmir upheld the preliminary objection and held, that since the Union of India is placed outside the territorial jurisdiction of the Jammu & Kashmir High Court, therefore, the Jammu & Kashmir High Court had no jurisdiction. The High Court granted certificate to appeal under Article 132 of the Constitution. The matter was placed before the five Judges Bench of the Hon'ble Supreme Court and thereafter it was referred to the Larger Bench. Therefore, Lt Col Khajoor Singh's case was decided by the Larger Bench of the Supreme Court consisting of seven Hon'ble Judges. In majority

judgment of the Hon'ble Supreme Court it has been held, that even if any inconvenience is left on account of the interpretation of Article 226, the remedy is not by interpreting law otherwise whan what the language says. The remedy seems to be constitutional amendment and therefore, held, as under :-

> "Proceedings under Article 226 are not suits; they provide for extraordinary remedies by a special procedure and gives power of correction to the High Court over persons and authorties and there special powers have to be exercised within the limits set for them." And thereafter held:-
>
> *"There is no scope for avoiding the inconvenience by an interpretation which we cannot reasonably, on the language of the Article, adopt and which the language of the Article does not bear."*

57. Article 226(2) is to meet with the difficulty which arose because of the having no reference of jurisdiction on the ground of cause of action. We have referred to the above judgments only to indicate that the constitutional law is different than the statutory laws, and when the subject matter is under statutory law, it is required to be decided according to the law framed for the purpose. Alleged hardship cannot be ground to interpret the law differently.

58. Apart from above, if we accept the view expressed in the case of Brig HMS Chatwal, it will not advance the cause of justice nor it will help in managing of the case work of the Tribunal which was one of the considerations noted in Chatwal's case. The working problem in Tribunal will increase, if we approve the view as taken in Chatwal's case. The litigants, before filing the lis, before any Bench out of two

or more Benches, where part of cause of action has arisen will not know, unless the Bench of the Tribunal decides that, in the opinion of the Bench, such Bench is "convenient' Bench for deciding the lis. The litigant expect that when the law, is unambiguous and clear, and has given option to litigant to avail the remedy from any Bench of the Tribunal within whose jurisdiction the cause of action or even part of the cause of action has arisen, then the applicant is free to select Bench as per his choice and convenience. If view expressed in Chatwal's case is accepted then such litigant, before filing the case, will not know, whether the Bench of the Tribunal will entertain the applicant's case or not. The litigant may not know that the Bench of the Tribunal may take into account its own (Bench's) inconvenience, which is not the concept for deciding the issue of *forum conveniens*.

59. Another aspect will be that, it is only the first Bench, where the lis is brought, that Bench will be in a position to invoke the concept of ***forum conveniens***. If the Bench invokes the concept of ***forum conveniens*** and directs to return the lis to the applicant for presentation before another Bench then whether, that other Bench may have the same jurisdiction to take a view with respect to its own convenience on the basis of the concept of *forum conveniens*? Whether the first Bench's decision of the *forum conveniens* will take away the right of another coordinate Bench for deciding the issue of *forum conveniens*? Be it as it may be, if Chatwal's view is followed the litigants will be in fix. A judgment of the Hon'ble Supreme Court

delivered in the case of ***Sundarjas Kanyalal Bhathija*** (supra) which will be very useful to refer here. In said case, Hon'ble Supreme Court observed, that :-

> *"we hold it to be the duty of Judges of superior courts and tribunals to make the law more predictable"*

And then also held, that :-

> *"Otherwise, the lawyers would be in a predicament and would not know how to advise their clients."*

60. In Chatwal's case the Tribunal found that there is a miniscule cause of action. We do not think that the Tribunal can further dissect the "cause of action in part." The cause of action has already been divided by the Rules of 2008 itself into; one, "cause of action wholly" and second, "cause of action in part". It will be very difficult for any Bench of the Tribunal as well as unnecessary burden upon the Bench of the Tribunal to determine the percentage of "cause of action in part" and thereafter, to hold that, upto what extent of "part of cause of action" the Bench will entertain the lis brought before it. Why the Bench of the Tribunal should go deep into the percentage of the "part of the cause of action"? This in our opinion, is neither required by law nor necessary as well as will be unnecessary burden upon the Bench of the Tribunal and that too in a matter, where the objection of the territorial jurisdiction itself is only a technical objection and not an objection of inherent lac of jurisdiction. This can be avoided by giving actual meaning to the language of Rule 6.

61. ***forum conveniens.*** The concept of ***forum conveniens*** also takes care of the litigants and is not meant for the conveniens of the Courts/Tribunals. Nor it should be construed to mean the conveniens of the Court/Tribunal in preference to the conveniens of the parties. In the case Col G.S. Ahluwalia, the Bench has noticed the concept of the **forum conveniens** and applied it to the conveniens of the Tribunal which is clear from the reasons mentioned in para 15 (quoted above) of the order passed in Brig HMS Chatwal's case.

62. In Brig Chatwal's case the Bench has presumed the likely inconvenience of the Tribunal and it's Benches. The apprehended inconvenience of the Benches and Tribunal is also not based on correct facts . In Brig HMS Chatwal's case, the Bench presumed that, since all relevant orders are passed at Delhi, therefore, all or substantial number of cases will be filed at Delhi and the other eight Benches of the Tribunal may be without work. This will frustrate the purpose of giving Benches near to place of the litigants. This apprehension is not correct. Reasons are simple. If work at Delhi will be more, then the State is under constitutional obligation to create as many numbers of Benches of the Tribunal at Delhi as are required. The State is under Constitutional obligation to provide sufficient number of Judges/Members in the Tribunal along with the adequate infrastructure. If the strength of the Judges/Members in Tribunal or staff and infrastructure is not sufficient, the State can improve its system. Instead of improving the system, the litigants legal rights

given by the law framed by the Legislature itself, cannot be taken away. If ***forum conveniens*** concept is invoked, on the basis of the workload of the Bench of the Tribunal and same concept is applied to the High Courts in India, whether it has given any benefit to any High Court? The best example in support of ***forum conveniens,*** that is cited is that, if the litigant is permitted to challenge the order of the Union of India/Central Government, obviously, at Delhi, then the courts at Delhi will be flooded with litigation. This plea ignored to answer the question, why all persons or any person will come from different parts of the country to a distant, and costly place, at the capital city of India, in place of the Bench of the Tribunal near to his place of posting, attachment or where he was last posted or where he is residing after end of his service? If we give an answer to this question, it will give the answer to respondent's objection. We shall be dealing with, the subject but we may observe, that looking to the huge pendency in the Courts also, the Courts have not invoked the *forum conveniens* so as to deny the access to the Court by the litigants and even when, the courts cannot decide the matters in next 10 years, even then, all the Courts are admitting the petitions and the suit in all the Courts.

63. The second aspect on this matter is that whether in fact, the choosing of forum by the litigants has affected the Tribunal's work load? The facts indicate, that normal orders affecting parties are passed at Delhi yet, the workload at Chandigarh Bench of the

Tribunal is almost three times to the work of the Principal Bench of the Tribunal, at Delhi. The workload at Lucknow Bench of the Tribunal is at least double the work of the Principal Bench of the Tribunal. Work with the Single Bench of the Tribunal at Jaipur is more than to the work at Principal Bench of the Tribunal. Neither before, nor after decision given in the Col G.S. Ahluwalia, the work imbalanced the work of the Principal Bench of the Tribunal at Delhi. Therefore, even if ***forum conveniens*** accepts the conveniens of the Bench of the Tribunal, then also there is no necessity to invoke this concept in Tribunal. The solution searched in the Brig HMS Chatwal's case will not be answer to the inconvenience of the Tribunal and its Benches.

64. In Brig HMS Chatwal's case the Bench observed, as under :-

> *"It may be pointed out here that as many as eight regional Benches of this Tribunal have been established across the country with a view to providing speedy and less expensive dispensation of justice to the serving as well as retired members of all the three Armed Forces of the Union residing in various parts of the country whereas Headquarters of all the three Services are located at New Delhi only. Obviously, all the complaints, representations etc. against various service wrongs are dealt with and decided in New Delhi only. Needless to say that if the doctrine of forum conveniens is not invoked, all the petitions under the Act would have to be entertained by the Principal Bench only and this would render all other Benches defunct. Such a situation was certainly not contemplated by the law makers."*

We have already demonstrated that neither such position is here in fact nor is there any chance of such apprehension coming true. Such

a position will not be in future also because of the reason that in our opinion, we cannot presume that a litigant having a Bench near to his place will travel to capital city of the country for filing the cases. We do not find any reason to infer, that a litigant from the small places from various states as well as from Guwahati, Kochi, Mumbai, Lucknow, Chandigarh, Jaipur and Kolkata from the places where Regional Benches and from Nanital, shimla, Bengluru, Jodhpur, where Circuit Benches are functional, will come to the capital city of the country and that too for small litigations like the pension, family pension, liberalized family pension, special family pension, disability pension for war injury pension, for getting ex gratia compensation by widows, etc. The substantial litigation is of above nature. We have referred the persons from the capital cities of the states. **Even these persons may not be able to afford to conduct the cases in the capital city of the country.** What therefore, to say about the litigants of villages of different states? Why these persons will come to Delhi for fighting a case against the Union of India? The law framers were fully aware to the fact that orders will be passed at Delhi and can be challenged at Delhi, yet they framed the law for territorial jurisdiction which allows the litigant to choose the bench of the Tribunal including the Principal Bench. In Chatwal's case, the Bench also observed that, the Benches of the Tribunal established across the country with a view to providing speedy, less expensive dispensation of justice, to the serving as well as retired members of all the three Armed Forces of the Unions. Why this purpose will be

frustrated by the litigants and they will come to New Delhi for getting expensive decisions in their cases? Question, why these persons will like to come to Delhi, may have escaped the attention of the Bench when Brig HMS Chatwal's case was decided.

65. **Bench Hunting.** In continuation of above, we may consider the arguments of learned ASG, that there are chances of Bench hunting by the litigants. Normally plea of Bench hunting ignores the plea of Bench avoiding by the party alleging Bench hunting. Bench hunting is one of the most important condemnations for the litigants. There are a number of cases when courts have condemned the litigants, finding that litigant was indulging in Bench hunting. Learned ASG has placed before us one of the order passed by the Bench of the Tribunal (Chairperson and Lt Gen Sanjiv Langer) delivered in ***OA 522/2014 Sepoy C. Jaya Kumar Vs. Union of India & Ors. decided on 10.11.2014.*** In the said case, we held that, the said petition was filed at the Principal Bench of the Tribunal without any reason even for name sake and observed that, the Bench has already in another case also, observed that, litigants started hunting and avoiding the Benches The subject of Bench hunting require a detailed scrutiny in view of the fact that the matter has been argued before us at length on the question of territorial jurisdiction wherein there is chance of allegation of Bench hunting and it is submitted that the litigant will start Bench hunting.

66. After our thoughtful consideration, we are of the view that the litigants may have been very casually condemned for Bench hunting (and also in the Courts). The question of Bench Hunting requires detail and elaborate discussion. In our opinion, when the law has given a right to the litigant to choose one of the forum (Bench), the Bench of the Tribunal has no right to take away the right of the litigant and also it has no right to question the bonafide of the litigant merely due to selection of the bench, which has been selected in exercise of such litigant's statutory right. Answer to the question is simple, at least for bona fide litigants. This is because, the law has given option and choosing one of the Benchesa by the litigant is compulsion of law. The litigants who are or may be blamed as not bona fide, first, before blaming the litigants we may think, why the litigant has preferred a particular Bench for filing the litigation? Where the Bench has no territorial jurisdiction, above question which will not arise. We have to ignore the case where the Bench has no territorial jurisdiction. In the case of Brig HMS Chatwal's case, the Bench after holding that the part of cause of action had arisen within the jurisdiction of the Principal Bench of the Tribunal, refused to exercise the jurisdiction not on the ground of lack of bona fide of the litigant but only because that the Bench can do so. When there is choice to choose Bench given by the law then only the litigant can select a particular Bench by his own choice. In our opinion, he can have many considerations for selection of the Bench. Such considerations also cannot be questioned by the Bench of the Tribunal. The

applicant, if have conveniens at particular place to get redressal, he is entitled to approach the Bench as per the law and even as per the *forum conveniens.* If applicant knows that the particular Bench has already taken a decision on the issue which is the basis for relief for the litigant then he has a right to take the benefit and has right to see that his case may not be delayed and need not to be argued afresh when the Bench has already delivered the judgment deciding the issue which favours the litigant. At the cost of repetition, we need to observe that our view is applicable to cases, only where the litigant has selected the Bench of the Tribunal and as per law, he has choice to select the Bench. This view has no application to the cases where the Bench has no territorial jurisdiction. How bonafides of such litigation can be doubted and particularly when, the other litigants from the same Bench, for whom whole of the cause of action has arisen within the territorial jurisdiction of the Bench, are getting the benefit of the view expressed by the Bench in earlier decision. There cannot be two classes of the applicants, one in whose case whole of the cause of action has not arisen within the territorial jurisdiction of such Bench and another, in whose case part of cause of action has arisen within the jurisdiction of the Bench.

67. The Bench hunting allegation on the litigant is not a right concept, if there is no extraneous consideration. The litigant can choose the Bench but cannot obtain the judgment/order unless the Bench gives the judgment/order which the Bench will give only upon

proving the case for the relief. When the Bench has no doubt then, if the litigant has come to the Bench even in misconception that the particular Bench is liberal then also the decision is to be given by the Bench. The litigants may have choice of bench, but Benches are not giving judgments as per the choice of the litigants. This takes care of the objection of Bench hunting.

68. In the case of Sepoy C. Jaya Kumar we have mentioned the facts in detail, that the petitioner was resident of the place in the State Tamil Nadu. His leg was already amputated. He had a nearer place to approach the Bench of the Tribunal which was near to his place of posting as well as residence. He had already retired on 01.07.2014. Said Sepy C. Jaya Kumar filed OA 522/2014 before the Principal Bench of the Tribunal with the plea that he had come to the Delhi temporarily for treatment and therefore, filed the OA before the Principal Bench of the Tribunal. In that situation the Tribunal found that the Bench has no jurisdiction. Therefore, in facts of case it was observed that there is tendency of bench hunting as well as avoiding a Bench. We may put a question, whether the question of Bench hunting will not raise a question of avoiding Bench by the Union of India? But we, as we would not like to condemn applicants, we will not like to condemn the respondent-Union of India with allegations of Bench avoiding.

69. The Bench hunting is required to be placed in *Juxtaposition* with the Bench avoiding. Normally, as in all the cases, the Union of

India is a necessary party. In an appropriate case, where no cause of action has arisen nor any part of the cause of action has arisen within territorial jurisdiction of a Bench, in that case the respondents including Union of India may have a valid reason to press their objection as a legal objection. The litigants before Armed Forces Tribunal are the Members or were the Members of the Armed Forces. Their bonafides cannot be doubted. The issue of such a technical nature of territorial jurisdiction has resulted into so many orders including the conflicting orders and twice reference to Larger Bench which could have been avoided, which would have saved the time of the Tribunal. We have to give this detailed order for very many reasons including because of the reason, that in the Tribunal, the importance of territorial jurisdiction is of less importance as is also in civil courts. Before the Tribunal, the Union of India is party always in the litigation and they can afford to effectively contest any case any where in any part of India. Keeping in view this position, Rule 6 was framed entirely differently to give the supremacy to the private litigant to choose the forum as per the private litigants conveniens. The very object and purpose of Rule 6 will be frustrated if such technical objections are raised and lengthy orders like this order are required to be passed by the Benches of the Tribunal when the Benches of the Tribunal may decide the entire original application as well as the appeal under Section 15 of the AFT Act, 2007 without any delay because in the Tribunal; procedure given in CPC has no application and oral evidence is not required which itself is sufficient reason for

early disposal of the cases. If because of the choice of the litigant work will increase in any particular Bench, that can be managed but sending the litigant out by the Bench on the basis of the conveniens of the Bench will certainly result into not only inconvenience to the litigants, but he will be saddled with the cost twice, like litigation cost and advocates fees and travel expenses with the additional burden upon the Tribunal of dealing with large number of preliminary objection bona fide or otherwise as well as, multiplicity of litigation.

70. Learned counsel for Union of India submitted that the cause of action has not been defined in any statute. This argument may be technically correct but has lost its significance because of the reason that the cause of action has been defined, may not be in any statute book as such, but has been defined in several judgments and we can take help of a comparably recent judgment delivered in the case of *M/s Kusum Ingots and Alloys Ltd. Vs. Union of India and Ors, reported in AIR 2004 Vol. VI SCC 254* wherein it has been held that, the cause of action is not defined in any statute but it has been judicially interpreted, *inter alia,* to mean that every effect which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment of the Court. Negatively put, it would mean that every language which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action then it has been held that, its importance is beyond any doubt. For every action, there has to be cause of action, if not, the plaint or the writ

petition, as the case may be, shall be rejected summarily. Therefore, now it is too late to say that the cause of action has not been defined. We have referred this argument and the legal position with clarity that whether any part of cause of action wholly or part of the cause of action has arisen within the territorial jurisdiction of the Bench of the Tribunal is required to be decided by the Bench on the basis of the facts of that case. Our this view is based upon the decision of the Hon'ble Supreme Court delivered in the case of *Rajasthan High Court Advocates Association Vs. Union of India Others; reported in AIR 2001 SC 416.* In *Rajasthan High Court Advocates Association* also the Hon'ble Supreme Court held that the expression "cause of action has acquired a judicially separate meaning and thereafter, reiterated the legal position interpreting, giving the definition of the cause of action by judicial pronouncements. Hon'ble Supreme Court in *Rajasthan High Court Advocates Association* held, that :-

> *"It has to be left to be determined in each individual case as to where the cause of action arises."*

71. In view of above discussion, in this reference we have decided only the question that, whether the litigants coming before the Tribunal have right to file the application/matters before the Bench as permissible by Rule 6 and in a case when the litigant has filed the application (matter) within the framework of Rule 6 of the Armed Forces Tribunal (Procedure) Rules, 2008 then whether, the Bench of the Tribunal, after holding that part of the cause of action has arisen

within the territorial jurisdiction of the Bench as the matter is fully in any of the clause of Rule 6, still whether the Bench can refuse to entertain the application/matter brought before the Bench by the litigant? We have answered that the litigant has choice to choose any of the Benches in accordance with Rule 6 of the Rules of 2008 and the Bench has no jurisdiction in the name of exercise of discretion or ***forum conveniens*** to refuse to entertain the lis brought before the Bench on the ground of discretion of ***forum conveniens***. This position of the law is same for application under Section 14 or it may under Section 15 of the AFT Act 2007, as for both, the same Rule 6 is applicable.

72. In sum and substance, we may sum up our conclusions:-

(a) Under the Rule 6 of the Armed Forces Tribunal (Procedure) Rules, 2008, the applicant has statutory right to choose any of the Benches, as per any of the clauses referred under Rule 6, including his legal right to file a lis before, the Bench within whose territorial jurisdiction the cause of action or the part of cause of action has arisen as the lis is covered by any of the clause of Rule 6 of the AFT (Procedure) 2008.

(b) The Tribunal (Benches of the Tribunal) have no jurisdiction to apply the concept of ***form conveniens*** against the statutory right of the applicant, the ***dominus litis***. The Rule

6 as a whole, in its language and intention is clear and unambiguous. The Tribunal is bound by the mandate of law and is precluded from speculating by first introducing an ambiguity or otherwise.

(c) The reference is answered as above.

(PRAKASH TATIA)
CHAIRPERSON

(SURINDER SINGH THAKUR)
MEMBER

(SANJIV LANGER)
MEMBER

Dated:: September 11, 2015/mlb