

ITEM NO.14

COURT NO.1

SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 1121/2023

ARMED FORCES TRIBUNAL BAR ASSOCIATION
CHANDIGARH BENCH

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(FOR ADMISSION and IA No.205681/2023-EX-PARTE STAY)

Date : 09-10-2023 This petition was called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA

For Petitioner(s) Mr. K Parmeshwar, Adv.
 Mr. Nishanth Patil, AOR
 Mr. Mv Mukunda, Adv.
 Mr. Mithun Shashank, Adv.
 Mr. Nishanth Patil, Adv.

For Respondent(s) Mr R. Balasubramaniam, Sr. Adv.

UPON hearing the counsel the Court made the following
O R D E R

1 The Armed Forces Tribunal Bar Association has invoked the jurisdiction of this Court under Article 32 of the Constitution seeking essentially two reliefs :

- (i) A stay on an order of transfer dated 25 September 2023 notified by the Principal Registrar by which in exercise of the powers under Section 5(3) (b) of the Armed Forces Tribunal Act 2007, the Chairperson of the Armed Forces Tribunal transferred Shri Justice Dharam Chand Chaudhary, Judicial Member at the Regional Bench at Chandigarh to the Regional Bench at

Kolkata; and

- (ii) A mandamus divesting the Ministry of Defence of control over the Armed Forces Tribunal.

2 We have heard Mr. K Parmeshwar, counsel in support of the petition. Mr R Balasubramaniam, senior counsel appears on behalf of the respondents and submits that the proceedings may be listed on 13 October 2023 since the Attorney General for India will appear.

3 In the present case, a Judicial Member of the Armed Forces Tribunal¹ who was posted at the Regional Bench at Chandigarh has been directed to be transferred to the Regional Bench at Kolkata.

4 Ordinarily, this Court is circumspect to interfere with orders involving transfer. Bearing in mind the conventional wisdom by which the exercise of the power of judicial review in the matters of transfer is subject to self imposed restraints, it is necessary to notice the grievance of the Armed Forces Tribunal Bar Association which has moved these proceedings.

5 The submissions which have been urged by Mr K Parameshwar on the first of the above reliefs are as follows :

- (i) On 4 December 2017, an order was passed by the AFT at Chandigarh in ***Roop Lal Vs Union of India & Ors*** (Annexure P-3 – MA 1869/2017 in OA No 408/2017) in a case pertaining to the grant of pension relating to Nayab Subedars in the Indian Army. Both the learned counsel agreed that the case was covered by the earlier decision of the AFT. The proceedings

1 “AFT”

were accordingly disposed of in the following terms :

“Written statement is taken on record. MA 1869 of 2017 is disposed of.

Heard and perused the record.

Learned counsel for both the parties have agreed that this matter is based on the similar facts and involves same question of law as was involved in OA No.2755 of 2013 titled as **Hoshiar Singh versus Union of India and others** decided on 27.10.2017 by the Co-ordinate Bench of this Tribunal. So this Original Application is disposed of in the same terms as in **Hoshiar Singh's case** (Supra)”;

- (ii) Over a period of five years, several orders were passed by the AFT on 20 December 2022, 2 March 2023, 28 April 2023, 22 May 2023 and 30 May 2023 directing compliance with the order for the grant of pension;
- (iii) The Union of India moved the High Court of Punjab and Haryana under Article 226 of the Constitution to challenge the orders which were passed by the AFT. By its judgment dated 7 July 2023 in CWP No 14249-2023 (O&M), a Division Bench of the High Court presided over by the learned Chief Justice, recorded the statement and undertaking that the officers of the Ministry of Defence would appear before the AFT on the next date of hearing. In the meantime, the proceedings initiated by the Tribunal for contempt and the bailable warrants were directed to be placed in abeyance. Paragraph 8 of the order of the High Court is set out below :

“8. In the circumstances, and in view of the undertaking and statement made before us, and subject to its compliance by the Officers concerned, the present writ petition is disposed of with a direction that in case the Officers concerned do so, the proceedings initiated by the Tribunal for sue moto contempt as well as the bailable warrants shall be kept in abeyance and shall remain stayed

till the next date of hearing before the Tribunal. It is made clear that as undertaken before this Court, in case the Officers appear before the Tribunal on the next date of hearing and file an affidavit, the same would be treated as a mitigating circumstance and the Tribunal may review its order to initiate suo moto contempt proceedings and issuance of bailable warrants. However, it is also made clear that in case the undertaking given before this Court is not complied with and the affidavit is not filed and the Officers concerned do not appear before the Tribunal on the date fixed the Tribunal shall be at liberty to proceed further in the suo moto contempt proceedings as well as bailable warrants, in accordance with law. It is made clear that this Court has not entered into the legal issues raised by the petitioners or expressed any opinion in that regard and therefore, in case occasion arises these issues may be raised by the petitioners again in subsequent proceedings.

With the aforesaid observations, the present petition is disposed of in terms of the undertaking given before this Court with a view to give quietus to the proceedings.”

- (iii) On 17 July 2023, when the proceedings came up before the AFT, they were directed to stand over to 15 September 2023. On 5 September 2023, an administrative notification was issued by the Deputy Registrar at the Principal Bench of the AFT to the effect that all execution applications will be listed only before Court No 1, namely, the court presided over by the Chairperson of the AFT at the Principal Bench at Delhi;
- (iv) On 15 September 2023, an order was passed by the Chairperson of the AFT granting an exemption from personal appearance and the proceedings were transferred from Chandigarh to the Principal Bench at Delhi;
- (v) On 23 September 2023, a notification was issued by which Shri Justice Dharamchand Chaudhary who was dealing with the execution petitions

was transferred from the Regional Bench at Chandigarh to the Regional Bench at Kolkata.

- 6 On the basis of the above narration, the submission of the petitioner is that the transfer is *mala fide*. The submission will have to be appreciated after hearing both the sides. At this stage, it does, however, appear that the order which was passed on 4 December 2017 was the subject matter of several orders passed by the AFT at its regional bench furnishing opportunities to requiring the Union Government to comply.
- 7 In the above backdrop, the circumstances in which Shri Justice Dharam Chand Chaudhary has been transferred from the Regional Bench at Chandigarh to the Regional Bench at Kolkata would merit close scrutiny. The transfer of a judicial officer in the circumstances which have been narrated above, while he was dealing with applications for non-compliance of the directions of the AFT in regard to the payment of pension to the Nayak Subedars would require evaluation.
- 8 We, accordingly, issue the following directions :
 - (i) The Chairperson of the AFT shall submit, presently, in a cover addressed to the Registrar Judicial of this Court, a report indicating the circumstances in which the order for the transfer of Shri Justice Dharam Chand Chaudhary from the Regional Bench at Chandigarh to the Regional Bench at Kolkata was passed;
 - (ii) Pending further orders, Shri Justice Dharam Chand Chaudhary shall not be required to assume charge at the Regional Bench at Kolkata;

- (iii) The execution petitions which were being heard by the Bench of the AFT at the Regional Bench at Chandigarh shall not be disposed of without the leave of this Court.

9 Apart from the first relief which has been sought, the petitioners have submitted that the administrative control over the Armed Forces Tribunal together with the funding is with the Ministry of Defence. The petitioners submit that the sole respondent in proceedings before the AFT, (apart from any competing claims of service officers) is the Ministry of Defence and the wielding of administrative and functional control by the Ministry of Defence is contrary to the judgments of the Constitution Bench of this Court in ***L Chandra Kumar Vs Union of India***², ***Union of India Vs R Gandhi***³ and ***Madras Bar Association vs Union Of India***⁴.

10 Issue notice returnable on 13 October 2023.

11 Mr K Parameshwar, counsel appearing on behalf of the petitioners states that a copy of the petition shall be served immediately on the counsel instructing Mr R Balasubramaniam, senior counsel.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR

2 (1997) 3 SCC 261

3 (2010) 11 SCC 1

4 (2021) 7 SCC 369