



Address by

Mr. Justice A.K. MATHUR

(Former Judge, Supreme Court of India)

Chairperson,

**ARMED FORCES TRIBUNAL
INDIA**

on

**JURISDICTION OF MILITARY COURTS –
AN INDIAN OVERVIEW**

at

GLOBAL MILITARY APPELLATE SEMINAR

on

1st APRIL, 2011

at

**YALE LAW SCHOOL
NEW HAVEN (USA)**

Friends, delay defeats the justice. Justice should not only be done but it should also appears to be done. These are the normal saying in the judicial system that if person does not get relief in time it virtually defeats the justice. These principles has to be kept in mind for dispensation of justice in our country. Before we deal with the salient features of the Armed Forces Tribunal Act, 2007 which came into force w.e.f. 15.06.2008. I may give a small resume of our Indian Judicial System. The Indian Constitution is based on three pillars i.e. Legislature, Executive & Judiciary. Legislature means the Indian Parliament consist of two houses Lok Sabha and Rajya Sabha and State assemblies known as Vidhan Sabha. The Executive means elected Government head by Prime

Minister & Cabinet and the Judiciary which is the custodian of the fundamental rights of the individual against the mighty State head by Chief Justice of India. The job of the Parliament is to lay down the law for the country and executive is headed by the Prime Minister which implements same and judiciary determines whether action taken by the executive is in accordance with the law laid down by the Parliament or not. Wherever there is any violation of law laid down by the Parliament or Constitution, the judicial reviews executive action and dispense the justice evenly between both the parties. This is the background of our Indian Constitution broadly. The job of the judiciary is to decide the rights of the parties vis-à-vis mighty State. The Indian Constitution framed special provisions for the armed personnel and Parliament has the right to curtail those rights

for armed personnel under Article 33 and armed personnel are only entitled to rights which are available to them as laid down by the Constitution & Parliament. Our Constitution as you know is a very exhaustive document which has taken care of rights and duties of all the three institutions under the various provisions of the Constitution. The Armed Forces of all the three Wings are governed by Army Act, 1950, The Navy Act, 1957 and Air Force Act, 1950.

The rights and duties of defence forces serving in either of three branches has been delineated in the Acts, Rules and Regulations framed under these Acts.

Judiciary is the third pillar of Indian Constitution and the Armed Forces Tribunal Act, 2007 is one of its wing. The constitution of Armed Forces Tribunal Act was contemplated

in Constitution from the very inception in Article 136 Clause 2 which contemplates that there shall be a tribunal relating to armed forces and its judgement, determination, sentence or order shall be final.

Similarly, Article 227 Clause - 4 of the Constitution says that Armed Forces Tribunal constituted shall not be subject to superintendence of the High Court. Therefore, initially the constitution contemplated that there shall be a Armed Forces Tribunal which shall judicially review the action of forces & dispense justice to them. But the pious hope of the constitutional framers was not heeded and it remained pious hope till 1982 when matter came up before the Supreme Court in case of *Lt.Col. Prithi Pal singh Bedi V. Union of India* [1982 (3) SCC 140]. In that, attention of the

Government was drawn for the need to have a Armed Forces Tribunal so as to fulfil the mandate of Constitution and their Lordships after referring to the precedent of the U.K emphasised the need of having such tribunal so that legitimate grievances of the armed personnel could be redressed. After examining the relevant provision of Constitution & Army Act,1950 their Lordships observed in following terms which reads as under:

"We, therefore, hope and believe that the changes all over the English-speaking democracies will awaken our Parliament to the changed value system. In this behalf, we would like to draw pointed attention of the Government to the glaring anomaly that courts martial do not even write a brief reasoned order in support of their conclusion, even in cases in which they impose the death sentence. This must be remedied in order to ensure that a disciplined and dedicated Indian Army may not nurse a grievance that the substance of justice and fair play is denied to it"

Their lordships further observed that appeals of the court martial under the Army Act is nothing but like an appeal from Ceaser to Ceaser's wife. In this background, the Court

emphasised that the personnel of Armed Forces are also citizens of the Country and they also are entitled to benefit of Constitution but provisions of the Army Act are so stringent and does not inspire confidence of the personnel that they are going to get a fair justice. Therefore, it was observed:

“The core question is whether at least there should be one appeal to a body composed of non-military personnel and who would enjoy the right of judicial review both on law and facts as also determine the adequacy of punishment being commensurate with the gravity of the offence charged. Judicial approach by people well-versed in objective analysis of evidence trained by experience to look at facts and law objectively, fair play and justice cannot always be sacrificed at the altar of military discipline. Unjust decision would be subversive of discipline. There must be a judicious admixture of both and nothing revolutionary is being suggested.”

Then their lordships has observed that even in UK had enacted a Court Martial (Appeals) Act of 1951 and it has been extensively amended in Court Martial (Appeals) Act of 1968 and appellate tribunal is constituted from members of

judiciary, likewise reference was made to the U.S.A. also that it also has Uniform Code of Military Justice Act, 1950, there also it was realised that appeals from Court Martial was not conducive to army authorities, therefore, Act was amended in 1968 and Military Justice Act, 1968 was introduced to bring far reaching changes.

However, Prithi Pal Singh's judgement did not evoke any positive response from the administration and ultimately a need was realised when the Armed Forces Tribunal Act, 2007 was enacted by the Parliament. It took about more than 25 years to realise that the Army needs an independent judicial body to determine their grievance. Therefore, for the first time this Act was introduced by the Parliament & the Preamble of the Act reads as under:

“An Act to provide for the adjudication or trial by Armed Forces Tribunal of disputes and complaints with respect to commission, appointments, enrolment and conditions of service in respect of persons subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950 and also to provide for appeals arising out of orders, findings or sentences of courts-martial held under the said Acts and for matters connected therewith or incidental thereto.”

Though, it was belated decision, but it is never late than ever. This is how the Armed Forces Tribunal Act, 2007 came to be promulgated by the Parliament. As you know from the Preamble as I read out above, it deals with Original jurisdiction as well as the Appellate jurisdiction. The original jurisdiction with regard to grievances of pension, supersession etc that have been incorporated in definition ‘service matter’ Section 3(o) which reads as under:-

“remuneration including allowances, pension retri al benefits, tenure including commission, appointments,

enrolment, probation, confirmation, seniority, training, promotion, reversion, premature treatment, superannuation, remission of service, summary disposal and trials where the punishment of dismissal is awarded or any other matter whatsoever connection to this.”

That shows that all the original matters pertaining to services of the members of defence forces can be looked into by the Tribunal. Any person aggrieved by any supersession or any reversion or pension matter or question of premature retirement or termination or discharge from service and likewise can be filed before this tribunal after exhausting administrative remedies available under the Act. The idea is army personnel should have some ventilation of their grievances before an independent body who can adjudicate their rights and can undertake a judicial review of the decision of the Armed Forces establishment or Government. This has given rise to lot many cases before

the tribunal and tribunal is now flooding with many litigations bearing under these service matters before all the nine benches spread all over the country

Then there is appellate jurisdiction also. The appellate jurisdiction means an appeal against any order passed by the Court Martial. Previously the appeals were from Court Martial were only available before the army authorities or Defence Ministry, there was no judicial adjudication. But with the advent of AFT Act of 2007, a regular appeal against the order passed by Court Martial shall lay before the tribunal. Therefore, this is a appellate jurisdiction which this tribunal exercises.

As mentioned above, these two jurisdictions, Original as well as Appellate jurisdiction covers entire service jurisprudence

except transfer matters or Summary court-martial where punishment is less than three months. This independent body is constituted by judicial member as well as administrative member. From the judicial side the Act contemplates that it shall be headed by a Chairperson, who shall be either retired Judge of the Supreme Court or a Chief Justice of the High Court and Judicial Member shall be a Judge of High Court. The Administrative Members are also recruited to assist the judicial members and they should hold the rank of Major General or above for at least for a period of three years in the Army or equivalent rank in Air Force or Navy or he has served not less than 3 years as Judge Advocate General in Army, Navy or Air Force not below the rank of Major General, Commodore(Navy) or Air Commodore respectively. The tenure of period for

appointment of such person is for period of 4 years.

Chairperson shall hold office for a period of 4 years or 70

years which is earlier. Likewise, Judicial Member or

Administrative Member shall hold office for a period of 4

years or 65 years, whichever is earlier. Therefore, the Act

has the persons from judicial stream and also persons from

administrative stream which makes the Armed Forces

Tribunal. Each bench of Tribunal shall have one Judicial

Member and one Administrative Member that will constitute

one bench. There are nine benches of the tribunal

spreading all over the country. In that, Principal bench is

stationed at Delhi which is headed by Chairperson who is

retired Judge of the Supreme Court and has two judges of

the High Court and three retired Lt.Generals as its

members. The Principal Bench has three benches

constituting judicial as well as administrative members.

Similarly, there are three benches at Chandigarh Bench and

Lucknow Bench. A single bench at Jaipur, Mumbai, Kochi,

Chennai, Calcutta and Guwahati. Out of total nine

benches, we have 8 benches operating all over the country.

Ninth bench at Mumbai is in process of being

operationalised and is expected to be operationalised by the

end of April this year.

The Act further contemplates henceforth all grievances of

the Armed Forces shall be placed before these benches and

jurisdiction of the Civil Court has been ousted and it has

been clearly mentioned in Section 14 of the Act that 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. And it further says that from that day any person aggrieved by an order of the Government can file it before the Tribunal. The Tribunal has been conferred the power of summoning of attendance of any witnesses; receiving the affidavits; and power to take the evidence also; can ask for public record or document from any office; issuing commissions for the examination of witnesses or documents; after hearing the parties it can dismiss the petition or allow the petition as the case may be. Therefore, it has all the powers of Civil Court. Similarly, while dealing with the appellate jurisdiction against the order of the court martial, it has full power to set aside the

findings of court martial not sustainable in law; it can allow the appeal, or set aside the conviction; can pass the appropriate orders; can substitute the findings of the court-martial, can find a guilty for any other offence for which the offender could have been lawfully found guilty by the court-martial; can pass fresh sentence for the offence specified or involved in such findings; can remit the whole case or part of it, it can reduce the sentence; it can commute the punishment or can enhance the sentence and also has the power of re-trial. Therefore, it shall be deemed to be criminal court for all purposes under Criminal Procedure Code.

The powers of the Civil Procedure Code as well as Criminal Procedure Code have been conferred on this tribunal. In

sum total, this tribunal has full power, civil as well as criminal court's and in exercise of that wherever it finds there is injustice it can reach and it can set things right. This is a framework of the Act. It has also framed the rules or procedure which lays down that in what format the petition be presented and it can be through a lawyer or by individual also. Then it further contemplates that under these rules and procedures a proper reply has to be filed by the respondent supported by an affidavit and the Court can summon any record for its perusal to find out that whether any injustice has been done or not. In exercise of the original as well as appellate powers, frequently this tribunal has been calling for the original record and the proceedings of all selection or supersession or termination likewise all original record for the purposes of deciding the issues

brought before it. Therefore, this tribunal has been made a sole authority for judicial determination of the grievances of the Armed Forces personnel. The tribunal has also been given a power to punish the persons for committing any contempt of proceedings in the Court. It is called a criminal contempt. In order to see that the persons behave properly and a Court business is conducted in a proper atmosphere and no scandalisation should take place, a power of criminal contempt has been given under section 19 of the Act.

The decision of the tribunal disposing of the application shall be final and not to be called in question in any Court and such order shall be executed as it is accordingly. However, there is one shortcoming under the Armed Forces Tribunal Act that is power of Civil Contempt. If any order has not

been complied with then there is no power of civil contempt for which a proper recommendation is pending with the Government. However, ordered passed by the tribunal is complete, but the Court lacks the power to get their orders executed by way of civil contempt.

There is also limitation prescribed in the Section 22 of the AFT Act, that incumbent normally has to approach the tribunal within six months from the date of rejection of representation, tribunal has the power to condone the delay.

The tribunal also has power to grant interim relief till the matter is finalised.

The territorial jurisdiction of all the benches has also been clearly delineated as per government notification. The

Principal Bench at Delhi caters to all the cases of Delhi and Chairperson has full power to call any case from any bench of tribunal and transfer any case from one Bench to another looking into exigencies. The decision of bench has to be unanimous between two members i.e. Judicial Member and Administrative, but in case of difference of opinion the matter is referred to the Chairperson who has to adjudicate in the matter whether to refer it to third judge or constitute a larger bench. For convenient disposal of all the matters the territorial jurisdiction of all the benches has been delineated. The Jaipur Bench has jurisdiction to all the cases arising from Rajasthan, Mumbai Bench has a territorial jurisdiction of Maharashtra, Goa and Gujarat, Kochi Bench has territorial jurisdiction of Kerala, and Karnataka States, Chennai Bench has jurisdiction of Andhra Pradesh

and Tamil Nadu State, Kolkata bench has jurisdiction to decide the matters pertaining to West Bengal, Bihar, Orissa and Jharkhand, Lucknow Bench has jurisdiction to decide the matters pertaining to UP, Madhya Pradesh and Chattisgarh and Guwahati Bench has jurisdiction to decide the matters arisen from Assam and all the seven North-Eastern States. The Chandigarh Bench has jurisdiction to decide all the matters of Punjab & Haryana, Himachal Pradesh and Jammu & Kashmir. A person who has any cause of action arising in this territorial jurisdiction has right to approach the respective bench of the tribunal. Rule 27 says that in case any person finds it difficult to approach the tribunal bench of respective territorial jurisdiction, he can make an application to the Chairperson to transfer the case from one bench to another.

The Benches of Tribunal also has power to hold circuit benches with prior approval of the Chairperson. These territorial jurisdictions has been made for convenience of all the litigants but apart from that if any bench decides to hold circuit bench, it has full power to move to any particular area or place falling within their territorial jurisdiction and can dispose of the cases by holding a sitting in Circuit Bench with prior permission of the Chairperson. This is a welcome step for the purposes of reaching out to needy public and to deliver justice at the doorstep of the litigant. This is an attempt to make it little more broad based so that it facilitate quick result with less expenses.

After operationalising of all the 8 benches, all the cases which were pending before the various High Courts had

been transferred by the High Courts to respective benches of the Tribunal and also number of fresh cases have been filed at Principal Bench and other regional benches. Brief Statement of cases received & and disposed of by AFT is as under:

S.No.	Benches of AFT	No. of cases transferred from High Courts to AFT	No. of fresh cases filed in AFT	Total	Nos. Of case disposed of
1.	Principal Bench	1392	1014	2406	1525
2.	Kolkata	215	60	275	135
3.	Chennai	357	55	412	325
4.	Kochi	369	140	509	227
5.	Lucknow	1695	260	1955	890
6.	Chandigarh	1614	916	2530	1325
7.	Jaipur	541	120	661	280
8.	Guwahati	58	3	61	22
	TOTAL	6241	2568	8809	4729

This is a small resume of the functioning of the these benches.

This Act of 2007 is unique in many respect that it has under one umbrella all service matters of defence personnel, be it Pension, Suppression, discharge, wrong done by Annual Confidential Report etc. & Court-martial matters. This is not available in developed countries, like England and America and they don't have original powers to deal with the matters. In my last visit to USA when I had an occasion to discuss the matters with my counter part they have only power to dispose of only Court Martial matters, a person who have been punished under various offences of the Act of Army, Air Force or Navy, their appeal is taken by the tribunal and it is being adjudicated by persons coming from the stream of judicial side. Similarly, in the case of

England also, their Chairman and Members are appointed from judicial stream exclusively, and all the matters arising from Court Martial are being disposed of whereas this act has been given both powers i.e. Original as well Appellate jurisdiction. Such wide powers are not given to the American & UK Armed Forces Courts. Therefore, this Tribunal Act of 2007 stand out as against the UK Act of 1968 and US Act of 1968. This is something very peculiar to this Act only which is not available to the Armed personnel of two big Nations. This Act though came belatedly but it has acquired a distinct feature as against the other Acts of the important countries like America and UK. Australia is also in the process of conducting similar exercise but that has not been finalised so far.

The judgements are circulated all over the country and it can be downloaded on AFT website. I would like to quote from a old Judgement from English Courts by their Apex Court that how the dispensation of justice was done in England because it is equally applicable to India as Army, Air force and Navy Acts are almost paramateria of the British Act as they have been borrowed from there only and highest court of England had occasion to observe with regard to Court Martial Courts which makes a very interesting reading in the case of Reid Vs. Covert, Justice Black observed as under:

Court martials are typically ad hoc bodies appointed by a military officer from among his subordinates. They have always been subject to varying degrees of "command influence". In essence, these tribunals are simply executive tribunals whose personnel are in the executive chain of command. Frequently, the members of the court martial must look to the appointing officer for promotions, advantageous assignments and efficiency ratings - in short, for their future progress in the service. Conceding to military personnel that thigh degree of honesty and sense of

justice which nearly all of them undoubtedly have, the members of a court martial, in the nature of things, do not and cannot have the independence of jurors drawn from the general public or of civilian judges”.

This is a typical attitude of the court martials courts and this is equally true for Indian Courts martial also, but such situation now will not be repeated as there is a judicial body who is there to adjudicate whether Court martial Courts has exceeded its jurisdiction or being influenced by any consideration. This is a real welcome relief to defence personnel. This is evident from fact that the decision of the court martials which are coming under review of various tribunals all over the country are resulting in acquittal in large measures. I may observe that for more than one and half year functioning as Chairperson I had occasion to deal with the orders of the Court martials, I can say without hesitation that there is a great need to reform this part of

the area of defence and provide a objectivity in Court martial trials which is to greater extent lacking may be bonafide or may be out of pure ignorance of law. In number of cases, I have already observed that all the three Acts of defence services need to be streamlined and duplication of procedure should be sorted out and all the presiding officers should be imparted basic training of administration of criminal justice by making a special branch or by sending them for training to District Courts to see how criminal trials takes place.

Judiciary strikes against arbitrariness, discrimination, irrational acts. Wherever there is well established judicial system in the world democracy thrives, that is fairness & transparency. But wherever it is not, there people have revolted. It is more true in discipline force like defence forces. You will

come across many cases in Army, Air Force & Navy that soldier either shot himself or shot his superior out of disgust because of lack transparency or discrimination or undue harassment. If such person have a remedy before a independent body whom he can repose confidence & look for justice then such irrational acts can be contained. There is common experience that under garb of discipline many indiscipline actions are done which result sometime individual revolt or mass revolt. Therefore, Judicial approach by people well-versed in objective analysis of evidence trained by experience to look at facts and law objectively, fair play and justice can rescue the situation. Justice cannot be sacrificed at the altar of military discipline. Injustice would be subversive of discipline.

* * * *