

**COURT No.1, ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**OA 965/2017 with MA 967/2018**

**Maj Gen M.S. Jaswal**

**... Applicant**

**Versus**

**Union of India and Ors.**

**... Respondents**

**For Applicant : Mr. Anand Kumar, Advocate**

**For Respondents : Mr. Anil Gautam, Advocate**

**WITH**

**OA 404/2018 with MA 425/2018**

**Lt Col Ranjeet Singh**

**... Applicant**

**Versus**

**Union of India and Ors.**

**... Respondents**

**For Applicant : Ms. Neela Gokhale, Advocate**

**For Respondents : Gp Capt (Retd.) K.S. Bhati, Sr. CGSC  
with Dr. Vijendra Singh Mahnidyan,  
Advocate**

**WITH**

**OA 655/2018**

**Col S. Satish Prabhu**

**... Applicant**

**Versus**

**Union of India and Ors.**

**... Respondents**

**For Applicant : Maj K. Ramesh, Advocate**

**For Respondents : Gp Capt (Retd.) K.S. Bhati, Sr. CGSC**

**CORAM :**

**HON'BLE MR. JUSTICE VIRENDER SINGH, CHAIRPERSON**

**HON'BLE MS JUSTICE SUNITA GUPTA, MEMBER (J)**

**HON'BLE LT GEN SANJIV CHACHRA, MEMBER (A)**

**ORDER**

O.A. No. 965 of 2017 was listed on 28.02.2018 before  
Court No. 2, comprising Hon'ble Mr. Justice V.K. Shali,

Member (J) and Hon'ble Lt. Gen. Philip Campose, Member (A), when the following order was passed :

***“.....Since this is the first prayer and this Bench of the Tribunal in Hunny Bakshi's case, OA No. 994/2015 has already taken a view that an order of attachment is in the nature of an order of posting/transfer as given in OA 1369/2016, Col Manish Kumar Chakravarty Vs. Union of India and OA 421/2016, Col Ashwani Sinha Vs Union of India, therefore, it does not constitute as a service matter and the Tribunal will not have the jurisdiction to entertain the application as the challenge is made to the order of attachment.”***

2. After the Tribunal passed the order in ***O.A. No. 994 of 2015 [Col Hunny Bakshi Vs. UOI & Ors.]***, learned counsel for the applicant, drew the attention of the Tribunal that in the judgment dated 13.02.2017 passed in OA No. 997/2013 by another Bench comprising Hon'ble Mr. Justice Satheesachandran and Hon'ble Air Marshal J.N. Burma, it has been held that order of attachment can be interfered with.

3. Since, there are two contrary views taken by different Benches of the Tribunal, the matter placed before a Larger Bench to resolve the controversy. Accordingly, O.A. No. 965/2017, along with other matters involving similar issue, came to be listed for arguments before this Larger Bench constituted by the Chairperson.

4. The issue that has now come up before the Larger Bench for consideration is :

***“Whether the attachment order issued under Army Instructions 30/1986 and Army Order 7/2000 is a posting/transfer falling under the exception provided under Section 3(o)(ii) of the Armed Forces Tribunal Act, 2007, so as to exclude it as a service matter”.***

5. To understand the above issue in the correct perspective, a number of judgments of the Apex Court, various High Courts and this Tribunal were referred to by the counsels for both the applicants as well as the respondents, notable among them are :

- a) O.A. No. 1369 of 2016 [Col Manish Kumar Chakraborty Vs. UOI & Ors.]
- b) Civil Appeal D. No. 3144 of 2017 [Col Manish Kumar Chakraborty Vs. UOI & Ors.]
- c) O.A. No. 176 of 2015 [Hav Sham Das D Vs. UOI & Ors.]
- d) Criminal Appeal Dy. 16040 of 2015 [Hav Sham Das D Vs. UOI & Ors.]
- e) O.A. No. 421 of 2016 [Col. Ashwani Sinha Vs. UOI &

Ors.]

- f) O.A. No. 997 of 2015 [Maj Asha Roshini MS Vs. UOI & Ors.]
- g) O.A. No. 994 of 2015 [Col Hunny Bakshi Vs. UOI & Ors.]
- h) O.A. (Appeal) No. 02/2014 of Regional Bench, Kolkata in [Lt Col Virender Singh Vs. UOI & Ors.]
- i) W.P. (C) No. 560 of 2012 of Guwahati High Court [Air Cmdr Mrigender Singh, VSM Vs. UOI & Ors.]
- j) W.P. (C) No. 1755 of 2013 of Delhi High Court [Major Saurabh Sharan Vs. UOI & Ors.]

6. Extensive arguments have been advanced in these matters by learned counsel for both the sides. Written synopsis along with policy letters, regulations etc. were also produced before us.

### **Submissions of Counsel for the Petitioners**

#### **Mr. Anand Kumar :**

7. Mr. Anand Kumar, learned counsel took the lead and opened his arguments in the premise that if the issue has been invoked under Army Instruction 30/1986, it should be heard by this Tribunal as it has the said jurisdiction. He has placed before us relevant paras of SAI 1/S/74, a copy of DV Ban Policy dated 20.04.2010 and Army Order 2/2002. Furthermore, he drew our attention to Regulations for the Army Para 453, which reads as follows :

***“RA 453(a) - No individual against whom  
a disciplinary case is pending should be***

***posted away from his unit/formation until disposal of the disciplinary cases against him. However, this may be permitted with administrative expediency with proper approval of DV Directorates, AG's Branch, Army Headquarters."***

8. To support his contention, the learned counsel has extensively referred to judgement of the Hon'ble Gauhati High Court in *Air Cmdr Mrigender Singh's case (supra)*, wherein it has been held that this Tribunal has jurisdiction even at the inquiry stage or summary of evidence stage. This issue was taken note of, the counsel elaborated, by this Tribunal (RB, Kolkata) in *LT Col Virender Singh's case (supra)* with regard to interpretation of Section 15 of the Act that even pre-trial decisions of the authorities with regard to Court of Inquiry, summary of Evidence or tentative charge-sheet stage would come within the purview of the expression "*or any matter connected therewith or incidental thereto*" and in that case an appeal calling in question such decision can also be made before this Tribunal under Section 15 of the Act. To strengthen his contention, Mr. Anand Kumar, the learned counsel referred to the relevant observations of the Hon'ble Delhi High Court in *Maj Saurabh Sharan's case (supra)* which reads as follows :

***“14. It is, therefore, held that any order, decision, finding or sentence passed by a court martial or any other matter connected therewith or incidental thereto would be within the Tribunal’s authority and jurisdiction. The Tribunal would be competent to pronounce upon the proceedings and procedure adopted by the court martial, pending confirmation of sentence.”***

9. Concluding his arguments, the learned counsel has further drawn our attention to an RTI response received by him on 15.09.2016 from the respondents on his query as follows :

***“4(x) Is attachment under Army Instruction 30/86 considered a posting ?***

***Ans. No***

***4(xi) Is attachment under Army Instruction 30/86 considered a transfer ?***

***Ans. No”***

Based on the information received under the Right to Information (RTI) Act, the learned counsel has made out a case that since it is not a transfer or posting, the Tribunal will have jurisdiction to deal with this case.

**Ms. Neela Gokhale :**

10. While referring to *Col Hunny Bakshi's case (supra)*, Ms. Neela Gokhale, the learned counsel has brought out that this Tribunal had concluded that attachment being a 'temporary posting' is excluded as a 'service matter' and, hence, has proceeded to hold that it has no jurisdiction to entertain the application. Whereas on the other hand, in *Maj Asha Roshni's case (supra)*, this Tribunal had noted that the challenge to Court of Inquiry and the consequent attachment order will not ordinarily fall within the meaning of 'any other matter' as provided in sub-clause (iv) of Section 3(o) of the AFT Act. The Court had further observed that 'any other matter' had to be given a narrow and restrictive meaning taking note of service matters specifically included under the definition of 'service matter', thereby concluding that the purview of 'any other matter' as defined in Section 3(o) of the Act brought it to be amenable to the jurisdiction of the Tribunal. Taking the argument further, the learned counsel made us go through Sections 14 and 3(o) of the Act, in order to appreciate the scope and ambit of the jurisdiction in such a situation, to which, she emphasized that the Tribunal has to first ascertain what exactly is the object sought to be achieved by the Act. In doing so, this Court has to see the statement of objects and reasons, the Preamble and the provisions of the AFT Act, 2007

as a whole. The learned counsel then drew our attention to the law already laid down in **Shashikant Laxman Kale Vs. Union of India** [(1990) 2 SCR 441], wherein the Hon'ble Supreme Court, when deliberated upon the constitutional validity of an exemption section contained in the Indian Income Tax Act, 1961, held that:

***“It is first necessary to discern the true purpose or object of the impugned enactment because it is only with reference to the true object of the enactment that the existence of a rational nexus of the differentia on which the classification is based, with the object sought to be achieved by the enactment, can be examined to test the validity of the classification.”***

To draw a similarity, the learned counsel took us to the Preamble of the AFT Act, 2007, which lays down :

***“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 court martial held under the said Acts and for matters connected therewith or incidental thereto.”***

11. The moot question, therefore, is, the learned counsel brought out, as to whether attachment order falls within the meaning of conditions of service needs to be ascertained. She also drew our attention to the Handbook on Pay And Allowances (Officers Of The Army), 2009, wherein the various types of attachments are defined as follows:

- “a. Attachment on disciplinary grounds, suspension etc.***
- b. xxx xxx xxx***
- c. Attachment to specified formations for receiving instructions and training in staff duties for a period not exceeding three months.***
- d. Attachment to the nearest unit/formation on discharge from hospital when found fit for duty pending receipt of posting orders.”***

Thus, the learned counsel contended that if the Tribunal is vested with the jurisdiction to entertain and try the challenge to the disciplinary proceedings, *de hors* the jurisdiction to deal

with a consequential relief, if not allowed, will lead to an absurdity. In such a case, a proceeding challenging the disciplinary action will be *sub judice* in the Tribunal, whereas a challenge to the consequential interim relief, will have to be agitated before the Hon'ble High Court. In the light of the aforesaid, the learned counsel contended that it was not only within its jurisdiction under the Act but also prudent for the Tribunal to accept it in the interest of speedy justice.

**Maj K. Ramesh :**

12. Maj K. Ramesh, learned counsel has focused on definition and terms used in the Armed Forces to differentiate between Permanent Posting, Attachments, both for staff as per Para 93 of Regulations of the Army and Disciplinary Attachment in Army Instructions 30/1986 leading us to believe that if a disciplinary action is contemplated, then from the first stage itself i.e. Court of Inquiry stage, to the final confirmation stage after a court martial, the jurisdiction of the AFT will prevail throughout. Thus, when the entire ambit and scope of disciplinary action rests undoubtedly under the jurisdiction of the Armed Forces Tribunal, the learned counsel emphasized, that separating out only the disciplinary attachment to be placed under the Hon'ble High Court of Judicature would not be correct, as even this action needs to be appreciated that it is not a normal administrative transfer

or a posting, but a proper attachment for disciplinary purposes. This would also lead to duplicating the efforts and, therefore, the attachment order should not be eschewed from the main subject of disciplinary action. He further assailed that this has been the past practice all along since the inception of the Tribunal, otherwise, the petitioners will have to approach the High Court under Article 226 of the Constitution of India leading to duplicating the efforts resulting in substantial delay of justice. Hence, the learned counsel concluded that all attachments for discipline purpose, at whatever stage they be, should be within the jurisdiction of the AFT.

**Submissions of counsel for the Respondents :**

13. Gp Capt (Retd.) K.S. Bhati, learned senior counsel for the respondents opened his arguments on the premise that the basic objective of the Armed Forces Act (Army Act, Air Force Act and Navy Act) is the maintenance of discipline in the armed forces, which is the essence of their organization, role and structure. The Acts bestow substantial powers on various authorities to deal with discipline as the Armed Forces are charged with the most paramount duty of defending the borders of the country and to also assist to maintain internal security. The Armed Forces Acts are complete codes in themselves and deal with the specific issues of each service

with specific offences and provide for an entirely different system of administration of justice. In that the power to move individuals/units etc. is an inherent power of the commanders, which enable them to take decisions pertaining to defence of the borders and even internal security. While discharging the role of national security, the Army units and formations have to simultaneously deal with disciplinary cases and each case of discipline nature involves the appreciation, investigation and final decision on disposal of such disciplinary cases. A court martial is a forum constituted to deal with specific case of discipline only. For holding a court martial, the authorities have to move not only an accused but also witnesses and members for court martial proceedings. Therefore, a judicial interference on the power of commanders/competent authorities has been specifically excluded in such moves, leave etc. Accordingly, the learned counsel has emphasized that the power to move personnel/equipment/units has a direct bearing on the functioning of Army units and formations.

14. The learned senior counsel further elaborated that the attachment orders issued in accordance with the provisions of Army Instruction 30/1986, in majority of the cases, are challenged on the basis that a Court of Inquiry was not done properly or provisions of Rule 180 of the Army Rules have not

been complied with. In this connection, it is relevant to appreciate that Court of Inquiry is only a fact finding body to enable the commanding officer to decide the course of action required in a particular case. This is the forum where some important principles of natural justice are to be complied with to give an opportunity to a delinquent person to come clean on the allegations. The movement on attachment for the purpose of holding a Court of Inquiry may also be necessary. However, once the competent authority decides and directs initiation of disciplinary action, the process of such action starts with the hearing of allegations by the commanding officer, which may be followed by recording of summary of evidence, wherein once again a person is given all liberty to cross-examine the witnesses, produce witnesses in his defence and to make statement in his defence.

15. Accordingly, the counsel has emphasized that if this process is interfered at any stage, it has serious implications in the functioning of the Army and may even cause obstruction in the discharge of its role. It is for this reason that the Act lists the issues where such a judicial intervention is barred and, therefore, the word 'attachment' needs to be interpreted harmoniously with regard to the scheme and structure of the Army and the spirit of exclusion clause in Section 3(o)(ii) of the Act.

16. The learned senior counsel then took us through Section 15 of the Act, which lays down that AFT is the first Appellate Court against Court Martial and have been given wide powers to deal with issues arising from the same. However, if the process of Court Martial is interfered with, the very functioning of the system would come to a grinding halt. It is particularly noteworthy that after the disciplinary process starts, the provisions of Indian Evidence Act are applicable and the Army Act and Rules provide for adjudication of various pleas available to a person facing court martial. Being an Appellate Court against finding and sentence of Court Martial, the appropriate stage for AFT to adjudicate all issues raised and adjudicated by Court Martial is after its conclusion, which would include confirmation and promulgation. For an appellate forum like Tribunal, the learned senior counsel emphasized that it will be more appropriate to have the views of a court martial while dealing with various objections which may be raised before it under the provisions of military law. Any judicial intervention *prior to this stage* would be contrary to the spirit and structure of the Act and is bound to interfere with the most paramount duty of Army i.e., to discharge its role of national security. It is seen that in every case of attachment, the challenge has been made on the basis that there was no prima facie case against the person to order such

an attachment, and in every case if the courts were to decide whether there is a *prima facie* case or not for ordering such attachment, the complete system of disciplinary proceedings will be defeated. The lawmakers were aware of this situation and, therefore, the exclusion clause was incorporated in Section 3(o)(ii) of the Act. It is further apparent that the word 'attachment' is not found in this clause, but from the ordinary meaning of this clause, it is clear that it is akin to the words *postings, temporary duty, transfer, etc.* No such instructions have been issued and, therefore, the matter of 'attachment' is governed by the discretionary powers of various commanders in the Armed Forces. He has further submitted that in Navy, Naval Instructions 95-97 of 1969 contains a provision regarding attachment of personnel for investigation and progress of disciplinary cases. However, it does not contain anything to mean that the attachment can only be ordered if there is a *prima facie* case.

17. The learned senior counsel further brought out that the Army Instructions 30/1986 has been in force since 1986 and has worked smoothly for a very long time. Neither has it been challenged on some valid grounds, nor has it been found unworkable so far. The frequent challenge to the '**attachment**' orders, the learned senior counsel emphasized, is a comparatively recent development and has been resorted

to apparently block the smooth system of disciplinary proceedings in the Army. Concluding his arguments, the learned senior counsel emphatically stated that for aforesaid reasons, a challenge to an 'attachment' order should not be maintainable by AFT.

**Consideration by the Tribunal :**

18. We have very consciously deliberated upon the issue at hand and have also given our serious consideration to the important aspect of discipline in the Army.

19. The question that arises is as to whether the challenge which is laid to the order of attachment is a 'condition of service' and can an Applicant raising a challenge to the attachment order be entertained by the Tribunal. Section 3(o) defines 'service matters' as under:-

***“service matters”, in relation to the persons subject to the Army Act, 1950(46 of 1950). the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), mean all matters relating to the conditions of their service and shall include –***

- (i) Remuneration (including allowances), pension and other retirement benefits;***
- (ii) Tenure. including commission, appointment, enrolment, probation, confirmation, seniority, training,***



*promotion, reversion, premature retirement, superannuation, termination of service and penal deductions;*

*(iii) Summary disposal and trials where the punishment of dismissal is awarded;*

*(iv) Any other matter, whatsoever.*

**but shall not include matters relating to :**

*(i) Transfers and postings, including the change of place or unit on posting whether individually or as a part of unit, formation or ship in relation to the persons subject to the Army Act, 1957 (62 of 1957) and the Air Force Act, 1950 (46 of 1960).*

*(ii) Leave of any kind.*

***Summary Court Martial except where the punishment is of dismissal or imprisonment for more than three months.”***

20. Although the order of attachment is a part of condition of service, but perusal of the Section 3(o)(ii) clearly ousts the jurisdiction of the Tribunal in respect of ‘transfers’ and ‘postings’ including the change of place or unit of posting whether individually or as a part of unit. The reading of the aforesaid provision clearly shows that the issue which needs to be decided by this Tribunal is as to what is meant by **‘attachment order’**.

21. For the purpose of showing what is an attachment order in the first instance, it may be pertinent to refer to Army Instruction 30 of 1986 under which orders of 'attachment' are issued. The said instruction reads as under:

**"ARMY INSTRUCTION  
No. 30 of 1986**

***New Delhi, Friday. August 1986/ Sravana 10.  
1908 SE***

***A1 30/86, Attachment of officers to other  
units for disciplinary purposes.***

***1. Officer against whom disciplinary action is contemplated may, where necessary, be attached to other units at the discretion of Army Headquarters or GOC-in Command concerned for the purpose of investigation and progress of the disciplinary case. However, such attachment will be ordered only when a prima facie case against him is established and not during investigation stage by a Court of Inquiry. In exceptional case where an officer's continued retention in his appointment say as CO, is not desirable, he may be attached to another unit or formation even at the commencement of Court of Inquiry.***

***2. During the attachment period the officers will continue to be held against the appointment held by them immediately before attachment and no replacement will be made until completion of the disciplinary proceedings.***

***3. This supersedes. A1 106/60.***

**Case No-A/41192/AG/PS 20854 DF AG)**  
**M of D (Fin)U.O. No 598-PA 1986**

***M.S. Sokhanda***  
***Dy. Secretary***

22. Seen in the background of Army Instruction 30 of 1986 and the dictionary meaning of the word "attachment" in the context of the order passed by the Respondents, all that transpires is that whenever the Respondents decides or contemplates to proceed departmentally for a disciplinary action against its officer/officials and that there is a prima facie case against him, may be 'attached' to a different unit. Such an 'attachment', as is evident, is in the nature of a temporary 'transfer' or a temporary move which is directed with a view to have an independent and impartial inquiry into the matter so that disciplinary proceedings are brought to its logical conclusion. The reason for this is not far to seek. It is essentially done with a view to see that the delinquent does not influence the witnesses, or get an opportunity to tamper with the evidence and, therefore, he is removed from his place of posting and 'attached' to different unit.

23. Sub-clause two of the Army Instruction further lays down during the period of attachment, the officer will continue to be held against the appointment held by him immediately before the attachment and no replacement will be made until

completion of disciplinary proceedings. Thus the learned senior counsel for the respondents concluded that such a temporary movement of an official in such cases would be akin to transfer or postings and would really be included in the exceptional clauses of “*but shall not include matters relating to*”.

24. It is noteworthy to highlight that during the course of hearing on 15.03.2019, it was brought to our notice that the Hon’ble Supreme Court has passed a judgment on 15.02.2019 in the matter of **Union of India & Ors. Vs. Lt Col Dharamvir Singh [Civil Appeal No. 1714 of 2019 (arising out of S.L.P. (C) No. 3480 of 2019)]**, which dealt with a similar issue, copy thereof was placed on file for our reference.

25. We have perused the said judgment. During the course of arguments, Gp Capt K.S. Bhati, the learned counsel for the respondents read out and elaborated on the nuances and impact of the said order. Mr. Anand Kumar, the learned counsel of the applicant, was also able to give us his perspective of the said judgment and submitted that the issue landed before us now stands answered by the Hon’ble Supreme Court and no further discussion is required for which Mr. Bhati joined issue.

26. The relevant extracts of the said judgement are appended below :

“ xxx xxx xxx

5. A learned Single Judge of the High Court entertained the Writ Petition on 5 November 2018. A submission was made before the High Court that an order of attachment, as prescribed under Army Instruction No. 30 of 1986, can be ordered only when a disciplinary action has been contemplated and when the order of attachment was issued on 5 October 2018, a tentative charge-sheet had not been furnished to the officer.

xxx xxx xxx

13. In our view, the High Court **was manifestly in error in entering upon an area which relates to the exercise of the disciplinary jurisdiction of the Army under the Army Act 1950**. The admitted **position is that the respondent** was posted at Nanded in Maharashtra. The learned Single Judge had **no reasonable** basis to exercise jurisdiction. Mr. Gonsalves has adverted to the fact that the spouse of the respondent initiated a petition for habeas corpus initially before the High Court of Manipur. Significantly, the **challenge in the Writ Petition which was instituted by the respondent before the High Court related exclusively to the order of attachment dated 5 October 2018, which was followed by two communications dated 2 November 2018 requiring him to proceed to the place of attachment. An officer subject to the**

***discipline of the Army Act 1950 must abide by the regulations, if the disciplinary jurisdiction is sought to be invoked. It was manifestly inappropriate for the High Court to take upon itself the task of preempting the exercise of that jurisdiction and taking over the essential function of determining whether or not recourse to the disciplinary jurisdiction was warranted.***

14.                xxx                xxx                xxx

15. ***The assumption of jurisdiction by the High Court in a Writ Petition under Article 226 of the Constitution was misconceived.*** We are also of the view that having regard to the definition of the expression “service matters” in Section 3(o) of the Armed Forces Tribunal Act 2007 and the jurisdiction of the Armed Forces Tribunal under Section 14, such a Writ Petition ***ought not to have been*** entertained by the High Court. ***The learned Single Judge should have exercised caution and ought to have been circumspect before he proceeded to stay an order of attachment.*** Such pre-emptive judicial strikes are unwarranted. The course of action followed by the Single Judge has serious repercussions for the maintenance of discipline in the Army. Discipline is the essence of the organisation and structure of an Armed Force. Before concluding, we make it clear that we have expressed no opinion on the merits of the allegations, in the exercise of the disciplinary jurisdiction which shall be

*dealt with in accordance with law. There is no merit in the alternate submission. This Court cannot take over the function of determining which unit the respondent should be assigned, pending the disciplinary proceedings.”*

*[Emphasis supplied]*

27. We have also gone through the grounds made out for the said SLP by the respondents in the Hon’ble Apex Court, which came up for consideration, notably among are :

**“E. Because the order of attachment was erroneously stayed by the first impugned order dated 05.11.2018, and upon filing of the counter affidavit, the said interim order has been extended till disposal of the writ petition.**

**J. Because the order of attachment dated 05.10.2018 has been issued for disciplinary purposes as the order itself reveals, which has been completely overlooked by the Hon’ble High Court.**

**M. Because in disciplinary proceedings, a writ court cannot even quash a charge memo leave aside an order attaching the respondent for initiation of disciplinary action.**

**N. Because in Ministry of Defense Vs. Prabhash Chandra Mirdha (2012) 11 SCC 565, at page 572, it has been specifically held by Hon’ble Court :-**

xxx

xxx

O. *Because if a court cannot interfere with the charge(s), it is not understandable as to how **can that be done by the writ court at the stage of issue of an attachment order.***

*[Emphasis supplied]*

28. Having regard to the above quoted order of the Hon'ble Supreme Court, and the 'spirit' of the said judgment, we are of the opinion and conclusion that we need to exercise caution and restraint on issues that have serious repercussions on the maintenance of discipline in the Army. In the context of the issue at hand, it is evidently brought out by the deliberations of both sides that an attachment order under Army Instruction 30/1986 is a temporary shifting out of an Army personnel to a different unit for investigations and may remain so till the completion of disciplinary proceedings against him.

29. The aforesaid Army instruction also clearly lays down that although the officer who is attached will be temporarily shifted to a different unit, till the completion of disciplinary proceedings against him, but he will, however, continue to remain under the administrative control of his unit of original posting and no replacement can be obtained in his place until the completion of the entire process of disciplinary proceedings.



30. The challenge against the order of attachment on the premise that it can be passed only when a *prima facie* case is established, as the learned counsel for the applicant have tried to make us believe, we find, has no merit or value at all, as it would be premature, and may, at times only, to ascertain whether there is a case at all. To reach to such a conclusion, attaching of an official may be necessary. Furthermore, what is clear is that whenever disciplinary action is contemplated against an officer and it is found necessary, at the discretion of the competent authority, such an officer can be attached to another unit for the purpose of investigation and progress of the disciplinary case. While stating unequivocally that an order of attachment can be passed for the purpose of investigation and progress of the disciplinary case, it is further clear that it is not necessary that such an order has to be issued only when a *prima facie* case is made out, but could well be during a preliminary investigation or for a Court of Inquiry.

31. Having said that another issue that is important that comes up for our consideration is the stage at which the attachment order is being assailed in a Court/Tribunal i.e., at the preliminary stage, or when the Court of Inquiry has found a *prima facie* case and a charge sheet is formulated or even later when the process of disciplinary action is to commence.

The relevance and role of an attachment order at each such stage would be for a specific purpose that would preclude the Tribunal from interference with the due process of law. Another factor that needs our consideration is that an attachment order can take place at the investigation stage itself by a court of inquiry, meaning thereby that, at this stage, the essential purpose of attachment is in effect a temporary moving out or removal of the officer from the place where he has access to the documentary evidence or where he may try to influence the witnesses and evidences, which may hamper holding of a free, fair and impartial Inquiry. Rightly so, then, this in essence, will be termed as a form of 'temporary posting' or 'transfer' coming under the purview of Section 3(o)(ii), which clearly states that the transfer or posting including a change of place or the unit where individual or the group, will be termed as a 'service matter'. If that be so, obviously, the issue comes under the exception clause and, obviously, it is not included within the purview of the jurisdiction of the Tribunal.

32. We now come to the specific aspect of the case wherein 'attachment' is for the purpose of only holding a preliminary Court of Inquiry. Should this be a stage where this Tribunal should interfere without affecting the due process of law is a very relevant aspect before us. A Court of Inquiry, as has been amply brought out earlier, is nothing but a fact finding body.

How the process is to be conducted is governed by the rules laid down in Chapter XII of the Defence Service Regulations. Various other Army Rules and policy guidelines in the Army also provide additional safeguards insulating the rights of parties who are likely to be proceeded against on the basis of the findings formed in a Court of Inquiry. It is also seen that the competent authority, as and when situation so demands, may constitute a Court of Inquiry to decide on the future course of action to maintain discipline and ethos of the defence forces. A Court of Inquiry thus as such, evidently, does not postulate a proceeding against a person, leave alone, any disciplinary action. It is only on the basis of the findings of a Court of Inquiry and, more so, on acceptance of such a finding by the competent authority, that the question of disciplinary action may arise. Thus, in the absence of any grave or exceptional circumstances indicating that the Court of Inquiry ordered is vitiated or *per se* tainted with illegality, no challenge thereto can be entertained before a Tribunal or a Court. Moreso, in matters involving discipline of the Armed Forces and any deviation detected thereto, giving rise to a Court of Inquiry, no interference should be permissible, since whatever be the opinion formed after an enquiry, if at all disciplinary action is to follow, there are adequate provisions provided for in the Acts that the person proceeded

under military law is amply insulated and protected of his valuable rights. Similar is the case for an order of attachment in contemplation of a disciplinary action. An attachment at the most, as is evident from the laid down provisions, is only a temporary posting for some definite purpose. Merely attaching an official for the purpose of an inquiry or disciplinary proceedings is neither a punishment or a stigma, nor does it tend to, directly or indirectly, adversely affect his service in any manner. Ordinarily, no challenge should be entertainable against a Court of Inquiry or its findings or an order of attachment before a Court or before the Tribunal as a 'service matter' falling under 'any other matter' under clause (iv) of Section 3(o) of the Act.

33. However, while dilating upon 'any other matter' under clause (iv) of Section 3(o) of the Act, we are of the view that if an exceptional case is made out or a compelling extraordinary case is carved out showing that there is a flagrant violation of the principles of natural justice in holding of a Court of Inquiry, resulting in grave and adverse impact or irreparable injury to a service personnel, with no efficacious remedy for redressal, then a challenge over the Court of Inquiry, its findings and even an attachment order following thereof to proceed with disciplinary action, can be amenable to the jurisdiction of the Tribunal. This, however, shall be case

specific with sufficient grounds made out to warrant such a judicial intervention.

34. The contention of the learned counsel for the applicant that it is not a service matter because it is neither a transfer nor a posting as is contemplated by Section 3(o)(ii) or as an answer to in an RTI reply by the respondents, does not impress us. This, as we have elaborated earlier, remains purely an administrative move covered under the exceptional clause in posting, transfer etc. under Section 3(o) of the AFT Act.

35. We are further of the view that as the word used in Section 3(o)(ii) is 'transfer and posting' and it further states that it 'includes' which clearly shows that this is not an exhaustive clause. It is an inclusive clause, and it would thus also include cases of attachment and as the said definition is not comprehensive, but is only permissive which will include posting, temporary posting or temporary transfer in the nature of attachment, as done by the respondents under Army Instruction 30/1986, in the event of contemplating proceedings against an officer in order to imbibe discipline. We, therefore, feel that because of the aforesaid reasons, and that since the attachment being a 'temporary posting', it is excluded as a service matter. For the aforesaid reasons, the Tribunal will have no jurisdiction to entertain the application.

36. We do, however, believe that this Tribunal, as stated aforesaid in Para 33 above, on finding that there is a flagrant negation of the principles of natural justice in passing the order of attachment leading to a disciplinary action thereafter, it would amount to an exceptional case, wherein an *‘influence at this stage itself’* would tantamount to an indulgence, and thus, we cannot and should not shy away from this exceptional situation. The case in OA (Appeal No. 997 of 2015) in *Maj Asha Roshni’s case (supra)* was a case of this nature wherein the Tribunal chose to intervene.

37. Following the observations of Hon’ble Apex Court in *Lt Col Dharamvir Singh’s case (supra)*, and our deliberations given aforesaid, we are of the view that as per the definition of the expression **‘service matters’** given in the clause **‘shall not include matters relating to’** in Section 3(o)(ii) of the Armed Forces Tribunal Act, 2007, the issue formulated as referred to in Para 4 hereinabove is answered as under :

***“The ‘attachment order’ issued under Army Instruction 30/1986 and Army Order 7/2000 will fall under the exception provided under Section 3(o)(ii) of the Armed Forces Tribunal Act, 2007, so as to exclude it as a ‘service matter’, unless very compelling extraordinary or exceptional case is carved out on facts for indulgence of the Tribunal.”***

38. We, however, make it clear that we have not commented upon the merits of any of the OA(s) before us and have deliberated upon only one issue referred to hereinabove and landed before the Larger Bench, which has now been answered. Therefore, the Registry is directed to place the OA(s) at hand before the appropriate Bench for further orders, if required in each individual case.

Pronounced in open Court on this 10<sup>th</sup> day of May, 2019.

**[JUSTICE VIRENDER SINGH]  
CHAIRPERSON**

**[JUSTICE SUNITA GUPTA]  
MEMBER (J)**

**[LT GEN SANJIV CHACHRA]  
MEMBER (A)**

/ng/