SUPREME COURT OF INDIA

Mohammed Ansari

Vs.

Union of India & Ors.

C.A.N.10131 of 2016

(Dipak Misra and Uday Umesh Lalit,JJ.,)

02.02.2017

JUDGMENT

Dipak Misra,J.,

SLP(Civil)No.31556 of 2013

1. The appellant was appointed as an Assistant Executive Engineer (E&M) vide order dated 03.06.1985 in Border Roads Engineering Services (BRES) by the competent authority of the Government of India, Ministry of Shipping and Transport. In due course, he was promoted to the post of Executive Engineer (E&M) on 30.05.1997 and thereafter promoted to the grade of Superintending Engineer (E&M) in General Reserve Engineering Force (GREF) of Border Roads Organization in the pay scale of Rs.12000-375-16500/- with effect from the date he assumes the charge of the post. The appellant after completion of more than requisite years of service was not granted non-functional financial upgradation for officers of Organised Group A and that compelled him to make representation to the concerned authorities but the same were turned down on the ground that he had not fulfilled the stipulated command posting of two years. Being aggrieved by the said communication, the appellant preferred Original Application No. 102 of 2012 before the Central Administrative Tribunal, Guwahati Bench, Guwahati.

2. The respondent filed a preliminary objection regarding jurisdiction of the tribunal. The tribunal decided the issue in favour of the appellant vide order dated 18.06.2012. The tribunal referred to its own decision in *Ramkali Mishra & Ors. v. Union of India*[1] passed by the Lucknow Bench wherein it has been held as follows:-

> "9. From what has been discussed above, the applicant, who is a directly recruited personnel of G.R.E.F., is governed by Rules of 1965 except for those rights which are restricted by S.R.O. 329 as amended by SRO 364 and 330 issued under section 4 of the Act of 1950 and read with Article 33 of the Constitution of India, in view of this, this Tribunal has jurisdiction to entertain the present O.A. filed against the order of removal passed against the applicant under Rules of 1965."

Being of this view the tribunal opined that it has jurisdiction to entertain the original application.

3. Dissatisfied with the order of the tribunal, the respondents preferred W.P. (C) No. 4074 of 2012 seeking quashment of the order passed by the tribunal. The High Court by the impugned order dated 2.8.2013 posed the following question:-

“Whether a member of the GREF can be regarded as member of Armed Forces, for, such a member, if regarded, in law, as a member of the Armed Forces, then, would the provisions, embodied in the Administrative Tribunals Act, 1985, not be available to such a member?

4. The High Court referred to the Constitution Bench decision in *R. Viswan & Ors. v. Union of India & Ors*[1], reproduced various passages from the said authority and also the order passed in S.L.P. (C) No. 8096 of 1995 (Union of India v. Smt. Vidyawati) and came to hold as follows:-

> “In the light of the decision, reached by the Supreme Court, in Vidyawati’s case (supra), one can have no escape from the conclusion, and we do conclude, that as far as Central Administrative Tribunal is concerned, a member of the GREF is not covered, in the light of the decision in R. Viswan (supra) read with the decision in Vidyawati’s case (supra), by the provisions of the Administrative Tribunals Act, 1985, and, hence, a member of the GREF would be disentitled from invoking the jurisdiction of the Central Administrative Tribunal.”

5. Thereafter, the High Court addressed the issue whether a member of the GREF is covered by the provisions embodied in the Armed Forces Tribunal Act, 2007 (for brevity, “the 2007 Act”). The Court adverted to the provisions of the Army Act, 1950 (for short, “the 1950 Act”), the provisions contained in the 2007 Act, the Central Civil Services (Control, Classification and Appeal) Rules, 1965, the authority in *Union of India & Ors. v. Sunil Kumar Sarkar*[2], and eventually arrived at the following conclusion:-

> “32. What surfaces from the above discussion is that the present respondent, as a member of the GREF and a member of the Armed Forces, cannot, in the light of the decision, in R. Viswan (supra) read with the decision, in Vidyawati’s case(supra), and could not have taken recourse to the provisions of the Administrative Tribunals Act, 1985. Consequently, the learned Central Administrative Tribunal has/had no jurisdiction in the matter of the petitioner’s (i.e., the present respondent’s) grievance as regards refusal to grant him financial upgradation and, at the same time, the respondent’s grievance shows that even the Armed Forces Tribunal cannot redress, and could not have redressed, his grievance as regards refusal to grant him financial upgradation. The remedy of the respondent, therefore, lies in making appropriate application in the High Court, under Article 226 of the Constitution of India, or in instituting appropriate suit for remedy of his grievances.”

6. Challenging the said order, it is contended by Ms. Priya Hingorani, learned counsel for the appellant that the High Court has failed to appreciate that the nature of grievance raised is adjudicable before the Central Administrative Tribunal and as a fact after determining the issue of jurisdiction which was raised as a preliminary issue, the tribunal has dealt with the controversy and granted the relief which has gone unassailed and in such a situation, the High Court should have declined to interfere. Learned counsel would further submit that the reliance placed by the High Court on the authorities in R. Viswan (supra) and Sunil Kumar Sarkar (supra) is founded on an inapposite appreciation, for the claim of the appellant is absolutely different. Additionally, it is urged that the delineation as regards lack of jurisdiction of the Armed Forces Tribunal suffers from fallacious reasoning. Lastly, it is canvassed that this Court may finally determine the forum and allow the appellant to prosecute his remedy, for he cannot have a grievance without a forum to agitate.

7. It is further urged that the High Court has failed to appreciate the impact and effect of the clarificatory circular issued by the office of Director General, Border Roads dated 6th June, 2012 as a consequence of an indefensible view has been expressed by the High Court which is required to be annulled.

8. Ms. Pinky Anand, learned Additional Solicitor General appearing for the respondents contends that the High Court has appositely held that the Central Administrative Tribunal has no jurisdiction to dwell upon the matters relating to employees of General Reserve Engineering Force which constitutes a part of the Border Roads Development Board (BRDB). It is her submission that the Armed Forces Tribunal does not have jurisdiction in terms of exceptions carved out under SRO 329 and 330 which have been issued by the Government in exercise of its power under Section 4(1) of the 1950 Act. It is put forth that these exceptions and these exceptions exclude the GREF from the purview of the 1950 Act in certain cases which pertain to service matters. On that basis, the learned counsel would urge that Section 2(1) of the 2007 Act though applies to all persons subject to the 1950 Act, yet regard being had to the language employed in SRO 329 and 330, the matters related to the service conditions of GREF would be governed by the Central Civil Service Rules, 1965. Therefore, submits the learned senior counsel, it is only the High Court that can entertain a lis relating to service dispute under Article 226 of the Constitution of India.

9. It is not in dispute that the appellant is a member of GREF in Border Roads Engineering Services. In R. Viswan (supra), the Constitution Bench was engaged in the interpretation of Article 33 of the Constitution and with the issue whether Section 21 of the 1950 Act read with Chapter IV of the Army Rules, 1954 is within the scope and ambit of Article 33 and, if it is, whether Central Government Notifications Nos. SRO 329 and 330 dated September 23, 1960 making, inter alia, Section 21 of the 1950 Act and Chapter IV of the Army Rules, 1954 applicable to the General Reserve Engineering Force are ultra vires that Article since the General Reserve Engineering Force is neither an Armed Force nor a Force charged with the maintenance of public order. The larger Bench dealing with the same adverted to the primary functions of GREF, the provisions of the 1950 Act and opined that so far as the personnel of GREF are concerned, they are partly drawn from the Army and partly by direct recruitment. Army personnel are posted in GREF according to a deliberate and carefully planned manning

policy evolved with a view to ensuring the special character of GREF as a force intended to support the Army in its operational requirements. The posting of Army personnel in GREF units is in fact regarded as normal regimental posting and does not entitle the Army personnel so posted to any deputation or other allowance and it is equated with similar posting in the Army for the purpose of promotion, career planning etc. The tenure of Army personnel posted in GREF units is treated as normal Regimental Duty and such Army personnel continue to be subject to the provisions of the 1950 Act and the Army Rules, 1954 whilst in GREF. The Court further ruled that the Army personnel who form an important segment of GREF, even the directly recruited personnel who do not come from the Army are subjected to strict Army discipline having regard to the special character of GREF and the highly important role it is called upon to play in support of the Army in its operational requirements. Since the capacity and efficiency of GREF units in the event of outbreak of hostilities depends on their all time capacity and efficiency, they are subjected to rigorous discipline even during peace time, because it is elementary that they cannot be expected suddenly to rise to the occasion and provide necessary support to the Army during military operations unless they are properly disciplined and in fit condition at all times so as to be prepared for any eventuality.

10. After adverting to the constitutional validity of Section 29 of the 1950 Act, the Court deliberated upon SRO 329 and 330 issued under the said Act and the Army Rules 1954 and expressed thus:-

> "The history, composition, administration, organisation and role of GREF which we have described above while narrating the facts clearly show that GREF is an integral part of the Armed Forces. It is undoubtedly a departmental construction agency as contended on behalf of the petitioners but it is distinct from other construction agencies such as Central Public Works Department etc. in that it is a Force intended primarily to support the Army in its operational requirement. It is significant to note that the Border Roads organization, which is in overall control of GREF was originally created as part of Army Headquarters and it was only later, for reasons of high policy, that it was separated from Army Headquarters and placed under the Border Roads Development Board."

11. Elaborating further, the Constitution Bench opined that GREF units carry out essentially those tasks which are otherwise carried out by Army Engineering Regiments and they provide engineering support to the Army both during peace time as also during hostilities. Dwelling upon the conditions of service and various facets, the Court ruled that the training includes not only drill, marching and saluting but also combat training including physical training such as standing exercises, beam exercises, rope work, route marches, etc. and combat engineering training including field engineering, handling of service explosives, camouflage, combat equipment, bridging, field fortifications, wire obstacles, etc. Moreover, the directly recruited personnel are taken up only after they voluntarily accept the terms and conditions of employment which include, inter alia, conditions 5(iv), 5(v), 5(vi) and 5(xi) and the said conditions make it clear that the directly recruited personnel may be required to serve anywhere in India and outside India and when directed, they would have to proceed on

field service and if required, they would also be liable to serve in any Defence Service or post connected with the defence of India. The Court further noted that it is also stipulated in these conditions that on their appointment, the directly recruited personnel would have to wear the prescribed uniform while on duty and that they would be subject to the provisions of the 1950 Act and the Army Rules, 1954 as laid down in SROs Nos. 329 and 330 for purposes of discipline and hence, it is abundantly clear that GREF is an integral part of the Armed Forces and the members of GREF can legitimately be said to be members of the Armed Forces within the meaning of Article 33 of the Constitution.

12. In Sunil Kumar Sarkar (supra) a general court martial under the provisions of the 1950 Act was initiated against the respondent for certain allegation of defrauding the Border Road Organization in which he was working as Superintendent, Buildings and Roads, Grade II. On conclusion of the proceeding, he was found guilty and sentenced to undergo rigorous imprisonment for one year. The order of conviction was confirmed by the competent authority. During the said period, the authorities acting under Rule 19 of the 1965 Rules issued a show cause notice as to why a suitable order should not be passed against him. The authority on the conclusion of the said departmental enquiry, dismissed the respondent from service. The review petition filed by the respondent therein did not meet with success. The conviction under the 1950 Act and the dismissal under the Army Rules was challenged before the Calcutta High Court in a writ petition and the learned Single Judge allowed the writ petition directing the authorities to pass a fresh order containing reasons. The said order was assailed in intra-court appeal and the Division Bench allowed the appeal opining that the court martial proceedings as well as disciplinary proceedings initiated against him were vitiated. This Court, being moved by the Union of India, allowed the appeal and quashed the judgment of the Division Bench. However, in that context it observed that in the course of the argument, a doubt was raised as to maintainability of the concurrent proceedings initiated against the respondent by the authorities, for the respondent had been punished for the same misconduct by them under the 1950 Act and as also under the 1965 Rules and in such a situation, it would amount to double jeopardy and thereby violating Article 14 of the Constitution of India. Dealing with the said facet, the Court held:-

> “Having considered the arguments addressed in this behalf, we are of the opinion that so far as the concurrent proceedings initiated by the Organization against the respondent both under the Army Act and the Central Rules are concerned, they are unexceptionable. These two proceedings operate in two different fields though the crime or the misconduct might arise out of the same act. The court-martial proceedings deal with the penal aspect of the misconduct while the proceedings under the Central Rules deal with the disciplinary aspect of the misconduct. The two proceedings do not overlap. As a matter of fact, Notification No. SRO-329 dated 23-9-1960 issued under the Central Rules and under sub-sections (1) and (4) of Section 4 of the Army Act makes this position clear. By this notification, the punishments that could be meted out under the Central Rules have been taken out of the purview of the court-martial proceedings under the Army Act. We further find support for this view of ours in the judgment of this Court *in R.Viswan v. Union of India*.[3]”

13. The aforesaid decision makes it clear that the proceedings under the 1950 Act as well as the 1965 Rules are maintainable and do not amount to double jeopardy. The principle that is deducible is that the person aggrieved under the 1950 Act at that juncture can approach High Court and similarly, the same person aggrieved by the imposition of punishment under the disciplinary proceeding can challenge the same under Article 226 of the Constitution before the High Court. Thus, it is graphically clear that this Court did not think that the aggrieved party can agitate the grievance before the Central Administrative Tribunal under the 1985 Act.

14. In this regard, we may refer to the SRO 329 issued by the Government of India in exercise of its power under Section 4(1) of the 1950 Act. It reads as follows:-

> "SRO 329 dated 23-9-1960 In exercise of the powers conferred by sub-sections (1) and (4) of Section 4 of the Army Act, 1950 (46 of 1950), the Central Government hereby:
>
> (a) applies to the General Reserve Engineer Force, being a force raised and maintained in India under the authority of the Central Government, all the provisions of the said Act with the exception of those shown in Schedule 'A' subject to the modifica¬tions set forth in Schedule 'B'; and
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> (b) directs that the officers mentioned in the first column of Schedule 'C' shall exercise or perform in respect of members of the said force under their command the jurisdiction, powers and duties inci¬dental to the operations of the said Act, specified in the second column thereof."

15. The aforesaid circular carves out certain exceptions. These exceptions include the GREF from purview of the 1950 Act in certain cases pertaining to service matters, in particular. To appreciate the controversy, it is pertinent to mention the exceptions which feature in Schedule A. They read as follows:-

> "SCHEDULE-A EXCEPTIONS SECTIONS 10, 11, 13 to 17, 20, 22 to 24, 43, 44 CLAUSES (d), (e), (f), (g) and (k) of Section 71, 74 to 78 clauses (e), (f) and (j) of Section 80 and clauses (a) Section 84."

The aforesaid exceptions clearly show that the 1950 Act has not been applied in entirety to the members of GREF.

16. In this regard, it is pertinent to reproduce Section 2(a) of the Administrative Tribunals Act, 1985, which reads as follows:-

> "2. Act not to apply to certain persons: The provisions of this Act shall not apply to -
>
> (a) any member of the naval, military or air forces or of any other armed forces of the Union;"

17. Section 3(q) of Administrative Tribunals Act, 1985, which is also relevant is reproduced below:-

> "3(q) "service matters", in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation or society owned or controlled by the Government, as respects-
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> (i) remuneration (including allowances), pension and other retirement benefits;
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> (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
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> (iii) leave of any kind;
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> (iv) disciplinary matters; or
>
> (v) any other matter whatsoever;"

18. On a plain reading of both the provisions, it is noticeable that the language of the provisions is absolutely plain and the Act does not apply to any member of the armed forces and, therefore, the High Court is justified in holding that Central Administrative Tribunal does not have the jurisdiction to deal with the controversy. In this regard, reliance has been placed in the order passed on January 9, 1998 in the case of Vidyawati (supra):-

> "As it appears to us that members of General Reserve Engineer Force cannot move the Central Administrative Tribunal in view of the decision of this Court in *R. Viswan & Ors. v. Union of India & Ors. (AIR 1983 SC 558),* that impugned decision of the Central Administrative Tribunal cannot be sustained and therefore is set aside. Liberty is, however, given to the respondent to move the High Court for appropriate relief if that respondent so desires. If such writ petition is filed, it will be appreciated if that High Court disposes of the same at an early date in view of the respondent is an aged widow."

19. Be it noted the High Court has relied on the same. It has referred to the decision in *L. Chandra Kumar v. Union of India*[3]*,* but we are disposed to think that it is not necessary to be adverted to the same, as there can be no trace of doubt that the Central Administrative Tribunal has not been conferred jurisdiction to deal with the lis in question.

20. The next issue that emerges for consideration is whether after coming into force of the 2007 Act, it will be the Armed Forces Tribunal which shall deal with the controversy or the High Court would still have the original jurisdiction under Article 226 of the Constitution of India. The Statement of Objects and Reasons of the 2007 Act clearly postulate that the

Armed Forces Tribunal is constituted for the adjudication of complaints and disputes regarding service matters and appeals arising out of the verdicts of the court-martial of the members of the three services (Army, Navy and Air Force) to provide for quicker and less expensive justice to the members of the said Armed Forces of the Union. Section 2 which deals with the applicability of the 2007 Act, reads as follows:-

> "2. Applicability of the Act : (1) The provisions of this Act shall apply to all 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).
>
> (2) This Act shall also apply to retired personnel subject to the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950) including their dependants, heirs and successors, in so far as it relates to their service matters."

21. Section 3(o) of the 2007 Act deals with jurisdiction of the Armed Forces Tribunal in respect of service matters. It is as follows:-

> "3(o) "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, super-annuation, termination of service and penal deductions;
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> (iii) summary disposal and trials where the punish-ment of dismissal is awarded;
>
> (iv) any other matter, whatsoever, but shall not include matters relating to—
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> (i) orders issued under section 18 of the Army Act, 1950 (46 of 1950), sub-section (1) of section 15 of the Navy Act, 1957 (62 of 1957) and section 18 of the Air Force Act, 1950 (45 of 1950); and
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> (ii) 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 per¬sons 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).
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> (iii) leave of any kind;
>
> (iv) Summary Court Martial except where the pun-ishment is of dismissal or imprisonment for more than three months;

22. Section 14 of the 2007 Act relates to jurisdiction, power and authority of the tribunal, which is extracted 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 Articles 226 and 227 of the Constitution) in relation to all service matters.
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> (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.
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> (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 reasons in writing.
>
> (4) xxxxxxxxxx
>
> (5) xxxxxxxxxx"

23. The language employed in Section 2 of the 2007 Act the lays the postulate that it will apply subject to the 1950 Act. Section 4 of the 1950 Act occurs in Chapter II which comes under the heading 'Special provisions for the application of Act in certain cases", which reads as follows:-

> "4. Application of Act to certain forces under Central Government.-(1) The Central Government may, by notification, apply, with or without modifications, all or any of the provisions of this Act to any force raised and maintained in India under the authority of that Government, and suspend the operation of any other enactment for the time being applicable to the said force.
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> (2) The provisions of this Act so applied shall have effect in respect of persons belonging to the said force as they have effect in respect of persons subject to this Act holding in the regular Army the same or equivalent rank as the aforesaid persons hold for the time being in the said force.
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> (3) The provisions of this Act so applied shall also have effect in respect of persons who are employed by or are in the service of or are followers of or accompany any portion of the said force as they have effect in respect of persons subject to this Act under clause (i) of sub- section (1) of section (2).

(4) While any of the provisions of this Act apply to the said force, the Central Government may, by notification, direct by what authority any jurisdiction, powers or duties incident to the operation of these provisions shall be exercised or performed in respect of the said force."

24. The statement of objects and reasons of the 2007 Act, as is manifest, mandates adjudication of complaints and disputes regarding service matters of the members of the Armed Forces. There is no dispute that members of the GREF belong to the Armed Forces. The constitution of GREF, as has been understood by this Court, has to be appreciated. It is a departmental construction agency responsible to build and maintain roads in the North and North Eastern border areas of the country. It is different from other construction agencies like CPWD, PWD, etc, inasmuch as, it is a Force raised and maintained by the Central Govt. to support the Army in latter's operational role at the border areas. The GREF functions under the Border Road Development Board, and its Units are modeled on the lines of Army Units/Sub Units like Task Force, Road Construction Companies, Road Maintenance Platoons etc.

25. To appreciate the controversy at hand, it is imperative to understand what has been held in R. Viswan (supra). The question that was raised before the Constitution Bench was as to whether members of GREF could be said to be the members of the Armed Forces within the meaning of Article 33 so as to apply Section 21 of the 1950 Act to them and the larger Bench, as has been stated earlier, held that since the members of GREF in the matters of discipline, are governed both by the provisions of 1950 Act and CCS(CCA) Rules, therefore, it will be left to the discretion of the authority whether to proceed against the employee under the 1950 Act or under the CCS(CCA) Rules and rejected the contention on the ground that the nature of the proceedings under both are different, the former being penal and the latter merely disciplinary in character. Therefore, R.Viswan (supra) is an authority to the extent that the members of GREF though may be termed as civilian officers, yet by the very nature of the organization, are treated to be an integral part of the Armed Forces within the meaning of Article 33 of the Constitution of India and would be subjected to penal action under the provisions of the 1950 Act and Army Rules, 1954 and disciplinary action under CCS (CCA) Rules, 1965.

26. In this regard, it is apt to refer to the authority in *Union of India v. G.S. Grewat*[4]. In the said case, the respondent, a major in Army, was considered for promotion to the next higher grade, i.e., Lt. Colonel, but could not be promoted after specified number of attempts. He was finally superseded in the Army and thereafter joined Directorate General of Quality Assurances (DGQA) and secured temporary secondment therein. In DGQA there was a provision vide OM dated 04.05.1993 that an officer finally superseded in Army would not be entitled to permanent secondment. In Army, however, pursuant to the report of a committee known as 'A.V. Singh Committee', all officers holding rank of Major who had completed 13 years of service, were promoted to the rank of Lt. Colonel irrespective of whether such officers had been finally superseded or not. The respondent was promoted as Lt. Colonel on 16.12.2004. However, the said policy was discontinued on 12.10.2007 on the orders of the Government. A policy for permanent secondment and promotion was issued on 16.11.2007

providing that permanent secondment will be restricted to the rank of Lt. Colonel and also that officers once permanently seconded would continue in the organisation till they retire and will also be considered for promotion to higher grades against their vacancies. The respondent was permanently seconded in DGQA on 10.04.2008 and also earned his next promotion to the rank of Colonel on 22.10.2008 in DGQA. The Ministry of Defence, however, issued an order dated 23.04.2010 stating that since the policy of promotion had been discontinued in the Army, the effect thereof was restoration of the earlier policy of 1993 in DGQA and, thus, no permanent secondment could be given after discontinuation of the policy in the Army in the year 2006. It was further provided that permanent secondment already given would not be withdrawn, but no further promotion shall be given to such officers. It was this order which was successfully assailed before the Armed Forces Tribunal. Before this Court, two contentions, namely, (i) the tribunal could not have entertained the lis since there was a decision by a coordinate bench of the tribunal holding that it had no jurisdiction, and (ii) the order impugned having been passed by the DGQA which is a civilian organization, the tribunal did not have jurisdiction to deal with the matter, were raised.

27. The Court though remanded the matter principally on the premise of the law laid down in *Sub. Inspector Rooplal v. Ltd. Governer*[5], yet in para 26 of the judgment, considered the question as to what would be determinative in considering the jurisdiction of the tribunal in the matters of officers also subjected to the 1950 Act and Army Rules. It observed as under:-

> "We may point out that merely because the respondent is subject to the Army Act would not by itself be sufficient to conclude that the Tribunal has the jurisdiction to deal with any case brought before it by such a person. It would depend upon the subject-matter which is brought before the Tribunal and the Tribunal is also required to determine as to whether such a subject-matter falls within the definition of "service matters", as contained in Section 3(o) of the AFT Act. In Major General S.B. Akali case , the Principal Bench primarily went by this consideration. The subject-matter was promotion to the rank of Lieutenant General and this promotion was governed by the Rules contained in the Policy of DRDO and not under the Army Act. Therefore, in the instant case, it is required to be examined as to whether the relief claimed is entirely within the domain of DGQA or for that matter, the Ministry of Defence or it can still be treated as "service matter" under Section 3(o) of the AFT Act and two aspects are intertwined and inextricably mixed with each other. Such an exercise is to be taken on the basis of documents produced by both the sides. That has not been done. For this reason, we deem it proper to remit the case back to the Tribunal to decide the question of jurisdiction keeping in view these parameters."

28. Thus, the Court clearly held that merely because the respondent is subjected to the 1950 Act would not by itself be sufficient to conclude that the tribunal had jurisdiction to deal with any case brought before it by such a person. It would depend upon the subject matter which is brought before the tribunal and the tribunal is also required to determine as to whether such a subject matter falls within the definition of "service matter" as contained in Section 3(o) of the 2007 Act.

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29. At this juncture, it is appropriate to refer to SRO 329. Schedule A thereof, as stated earlier, carves out certain exceptions. Certain provisions of the 1950 Act i.e. Sections 10, 11, 13 to 17, 20, 22 to 24 [falling under Chapter III of the 1950 Act dealing with commission, appointment and enrolment], Section 43, 44 [falling under Chapter VI - offences' viz. fraudulent enrolment and false answers on enrolment respectively and clauses (d), (e), (f), (g) and (k) of Sections 71, 74 to 78, clauses 9e), (f) and (j) of Section 80 and clause (a) of Section 84, falling under Chapter VII - punishment] have been exempted in their application to the civilian members of the GREF, for the civilian personnel of GREF are not commissioned or enrolled or appointed under the 1950 Act and they are not, therefore, members of the 'regular Army' as defined in Section 3(xxi) of the 1950 Act. It is for this reason that certain provisions of the 1950 Act as set out in Schedule B of the SRO 329 have been modified in their application to the members of the GREF. This is fortified by the fact that the GREF personnel are appointed as civilian component of the force in various appointment(s)/ designation in GREF and notified with equivalent ranks in the regular army for the purpose of the 1950 Act vide SRO 1001 dated 20th May, 1961.

30. In view of the statutory framework, it is demonstrable that the 1950 Act and the Army Rules, 1954 have been applied to civilian personnel of the GREF only for the purpose of discipline. The reasons are obvious. The GREF is a force raised and maintained under the authority of the Central Government, its units are set up on the lines of the Indian Army, it works with and under close coordination with regular army in border areas, facilitates the Indian Army to carry out its operational role, etc. Hence, it has been felt appropriate that the 1950 Act should be made applicable to a force raised and maintained by the Central Government as considered necessary in the interest of discipline. The issue can be perceived from a different perspective. The GREF personnel are subjected by legislative scheme to dual disciplinary control, and such an arrangement is permissible as has been held in R. Viswan (supra). When the offence is such that the provisions of the 1950 Act, as extended to GREF, apply for the purpose of discipline, it will be open to the competent disciplinary authority under the1950 Act, to proceed against the delinquent under its provisions, and if found guilty, award appropriate punishment. In this context, we may give an example. If an offence is committed in relation to an enemy, offences on active service, mutiny, desertion, disobedience, etc., considering the nature and gravity of the offence, it may warrant severe action against the delinquent by way of trial by a court martial. In other disciplinary cases, the competent authority may decide to proceed under CCS(CCA) Rules, 1965 in which the maximum permissible punishment is only 'dismissal from service'.

31. In this backdrop, jurisdiction of the tribunal has to be determined. As is seen, the 2007 Act has been made applicable to persons subject to the 1950 Act, the Navy Act, 1957 and the Air Force Act, 1950, the retired personnel subject to these Acts including their dependants, heirs and successors insofar as it relates to their service matters. The tribunal constituted in terms of Sections 4 and 5 thereof, is vested with twin jurisdiction viz., jurisdiction, powers and authority in service matters as provided in Section 14 and the jurisdiction in matter of appeal against courts martial under Section 15 of the Act.

32. The situation insofar as jurisdiction of the Armed Forces Tribunal (AFT) to hear the appeals arising out of court martial verdicts qua GREF personnel, however, appears to stand on a different footing. It is because the provisions of Chapter VI i.e. offences, Chapter VII i.e. punishment, Chapter X i.e. 'courts martial' etc. apply with full force, subject to minor exceptions and modifications here and there, as applied to GREF. Therefore, the provisions of the 1950 Act dealing with various punishments inflicted by way of courts martial qua GREF personnel as applied can be agitated before the AFT and the AFT shall have jurisdiction to hear appeals arising out of courts martial verdicts. There can be no doubt that in respect of said matters the AFT shall have jurisdiction. Denial of jurisdiction to the said tribunal would be contrary to the 1950 Act and the provisions engrafted under the 2007 Act. To elaborate, right to approach the AFT by the personnel of GREF who are tried by a court martial held under the very same Act has to be recognised. At the same time, if the punishment is imposed on GREF personnel by way of departmental proceedings held under the CCS(CCA) Rules, 1965 then obviously the same cannot be agitated before the AFT since the penalty in such cases will not be one under the 1950 Act but will be under the CCS(CCA) Rules, 1965. The distinction, as the law exists in the present, has to be done.

33. From the aforesaid, the legal position that emerges is that AFT shall have jurisdiction (i) to hear appeals arising out of courts martial verdicts qua GREF personnel. To this extent alone the AFT shall have jurisdiction. At the same time if the punishment is imposed on GREF personnel by way of departmental proceedings held under the CCS(CCA) Rules, 1965 the same cannot be agitated before the AFT and (ii) AFT shall have no jurisdiction to hear and decide grievances of GREF personnel relating to their terms and conditions of service or alternatively put 'service matters'.

34. At this stage, it is necessary to recapitulate that during the pendency of the matter before the High Court, the Central Administrative Tribunal had passed the final order on 5.11.2012 in favour of the appellant. Be that as it may, the tribunal does not have the jurisdiction to deal with an issue of upgradation or the nature of lis raised by the appellant before it. In the absence of lack of inherent jurisdiction to deal with the issue, the said judgment is a nullity. It has no existence in law. It is well settled in law that the judgment passed is a nullity if it is passed by a court having no inherent jurisdiction. The decree to be called a nullity is to be understood in the sense that it is ultra vires the powers of the court passing the decree and not merely voidable decree. [See *Hiralal Moolchand Doshi v. Barot Raman Lal Ranchhoddas*[7]].

35. In view of the aforesaid, we dismiss the appeal and concur with the view expressed by the High Court that it only has the jurisdiction to deal with the controversy raised by the appellant. The challenge was by the Union of India and its functionaries to the order dated 18.6.2012 passed by the tribunal negativing the preliminary objection raised by the Central Government as regards the jurisdiction of the tribunal. Thus, the grievance agitated by the appellant has really not been addressed by any competent forum. His grievance deserves to be dealt with in accordance with law. In view of the obtaining situation, we grant liberty to the appellant to approach the High Court for redressal of his grievances within three months hence. We request the High Court to dispose of the matter, if filed, on its own merits and

not throw at the threshold on the ground of delay and laches. There shall be no order as to costs.

Judgment Referred.

[1](1983) 3 SCC 0401
[2](2001) 3 SCC 0414
[3](1997) 3 SCC 0261
[4](2014) 7 SCC 0303
[5](2000) 1 SCC 0644
[6](1993) 2 SCC 0458