

Armed Forces Tribunal Act 2007

Chapter III - Jurisdiction, Powers and Authority of the Tribunal

(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.

(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.

(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) For the purpose of adjudicating an application, the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908(5 of 1908), while trying a suit in respect of the following matters, namely--

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872(1 of 1972), requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) reviewing its decisions;
- (g) dismissing an application for default or deciding it ex parte;
- (h) setting aside any order of dismissal of any application for default or any order passed by it ex parte; and
- (i) any other matter which may be prescribed by the Central Government.

(5) The Tribunal shall decide both questions of law and facts that may be raised before it.

Section 15 - Jurisdiction powers and authority in matters of appeal against court martial

- (1) Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable under this Act in relation to appeal against any order, decision, finding or sentence passed by a court martial or any matter connected therewith or incidental thereto.
- (2) Any person aggrieved by an order, decision, finding or sentence passed by a court martial may prefer an appeal in such form, manner and within such time as may be prescribed.
- (3) The Tribunal shall have power to grant bail to any person accused of an offence and in military custody, with or without any conditions which it considers necessary:

Provided that no accused person shall be so released if there appears reasonable ground for believing that he has been guilty of an offence punishable with death or imprisonment for life.

- (4) The Tribunal shall allow an appeal against conviction by a court-martial where--
 - (a) the finding of the court martial is legally not sustainable due to any reason whatsoever; or
 - (b) the finding involves wrong decision on a question of law; or
 - (c) there was a material irregularity in the course of the trial resulting in miscarriage of justice,but, in any other case, may dismiss the appeal where the Tribunal considers that no miscarriage of justice is likely to be caused or has actually resulted to the appellant:

Provided that no order dismissing the appeal by the Tribunal shall be passed unless such order is made after recording reasons therefor in writing.

- (5) The Tribunal may allow an appeal against conviction, and pass appropriate order thereon.
- (6) Notwithstanding anything contained in the foregoing provisions of this section, the Tribunal shall have the power to--
 - (a) substitute for the findings of the court martial, a finding of guilty for any other offence for which the offender could have been lawfully found guilty by the court martial and pass a sentence afresh for the offence specified or involved in such findings under the provisions of the Army Act, 1950(46 of 1950) or the Navy Act, 1957(62 of 1957) or the Air Force Act, 1950(45 of 1950), as the case may be; or
 - (b) if sentence is found to be excessive, illegal or unjust, the Tribunal may--
 - (i) remit the whole or any part of the sentence, with or without conditions;
 - (ii) mitigate the punishment awarded;
 - (iii) commute such punishment to any lesser punishment or punishments mentioned in the Army Act, 1950(46 of 1950), the Navy Act, 1957(62 of 1957) and the Air Force Act, 1950(45 of 1950), as the case may be;
 - (c) enhance the sentence awarded by a court martial:

Provided that no such sentence shall be enhanced unless the appellant has been given an opportunity of being heard;

(d) release the appellant, if sentenced to imprisonment, on parole with or without conditions;

(e) suspend a sentence of imprisonment;

(f) pass any other order as it may think appropriate.

(7) Notwithstanding any other provisions in this Act, for the purposes of this section, the Tribunal shall be deemed to be a criminal court for the purposes of sections 175, 178, 179, 180, 193, 195, 196 or 228 of the Indian Penal Code(45 of 1860) and Chapter XXVI of the Code of Criminal Procedure, 1973(2 of 1974).

Section 16 - Re-trial

(1) Except as provided by this Act, where the conviction of a person by court martial for an offence has been quashed, he shall not be liable to be tried again for that offence by a court-martial or by any other Court.

(2) The Tribunal shall have the power of quashing a conviction, to make an order authorising the appellant to be retried by court martial, but shall only exercise this power when the appeal against conviction is allowed by reasons only of evidence received or available to be received by the Tribunal under this Act and it appears to the Tribunal that the interests of justice require that an order under this section should be made:

Provided that an appellant shall not be retried under this section for an offence other than--

(a) the offence for which he was convicted by the original court martial and in respect of which his appeal is allowed;

(b) any offence for which he could have been convicted at the original court martial on a charge of the first-mentioned offence;

(c) any offence charged in the alternative in respect of which the courtmartial recorded no finding in consequence of convicting him of the first-mentioned offence.

(3) A person who is to be retried under this section for an offence shall, if the Tribunal or the Supreme Court so directs, whether or not such person is being tried or retried on one or more of the original charges, no fresh investigation or other action shall be taken under the relevant provision of the Army Act, 1950(46 of 1950) or the Navy Act, 1957(62 of 1957) or the Air Force Act, 1950(45 of 1950), as the case may be, or rules and regulations made thereunder, in relation to the said charge or charges on which he is to be retried.

Section 17 - Power of the Tribunal on appeal under section 15

The Tribunal, while hearing and deciding an appeal under section 15, shall have the power--

- (a) to order production of documents or exhibits connected with the proceedings before the court martial;
- (b) to order the attendance of the witnesses;
- (c) to receive evidence;
- (d) to obtain reports from court martial;
- (e) order reference of any question for enquiry;
- (f) appoint a person with special expert knowledge to act as an assessor; and,
- (g) to determine any question which is necessary to be determined in order to do justice in the case.

Section 18 - Cost

While disposing of the application under section 14 or an appeal under section 15, the Tribunal shall have power to make such order as to costs as it may deem just.

Section 19 - Power to punish for contempt

(1) Any person who is guilty of contempt of the Tribunal by using any insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such Tribunal shall, on conviction, be liable to suffer imprisonment for a term which may extend to three years.

(2) For the purposes of trying an offence under this section, the provisions of sections 14, 15, 17, 18 and 20 of the Contempt of Courts Act, 1971 shall mutatis mutandis apply, as if a reference therein to--

- (a) Supreme Court or High Court were a reference to the Tribunal;
- (b) Chief Justice were a reference to the Chairperson;
- (c) Judge were a reference to the Judicial or Administrative Member of the Tribunal;
- (d) Advocate-General were a reference to the prosecutor; and
- (e) Court were a reference to the Tribunal.

Section 20 - Distribution of business among the Benches

The Chairperson may make provisions as to the distribution of the business of the Tribunal among its Benches.
