

Inauguration of Armed Forces Tribunal – Jaipur Bench

(Jaipur – January 23, 2010)

Address by Hon'ble Mr. K.G. Balakrishnan, Chief Justice of India

Ladies and Gentlemen,

It is my proud privilege to be present here for the inauguration of the Jaipur Bench of the Armed Forces Tribunal (AFT). It is hoped that this Tribunal will serve as an effective grievance redressal mechanism for the defence personnel who are called on to make countless personal sacrifices to protect our country. Thousands of them have laid down their lives during armed conflicts and all of them have rendered exemplary service during emergency situations such as those which follow natural disasters and civil disturbances. Whenever or wherever they are called, they are ready to serve our country.

Many of the armed forces personnel work in far flung areas and in a way the justice delivery system is inaccessible to them. Even if they have genuine grievances, it is considerably difficult for them to directly approach the judicial system. Therefore, it was necessary to create a specialised forum wherein their interests would be accounted for while at the same time maintaining the prestige of the armed forces. It is with this objective in mind that the Armed Forces Tribunal was conceived of.

It was Justice D.A. Desai who had expressed the necessity for providing a right of appeal against the orders, findings and sentences given in court-martial proceedings. These observations made in the case of **Lt. Col. Prithi Pal Singh Bedi and Ors. v. Union of India and Ors.**, (1982) 3 SCC 140, were also highlighted in the 169th Report of the Law Commission of India (1999). This report had also stressed on the need for amending the relevant provisions of the Army Act (1950), the Air Force Act (1950) and the Navy Act (1957). It was perceived that the content of these legislations had largely carried on the colonial-era mindset of authoritarianism. However, with the passage of time it was necessary for the military justice system to evolve towards liberal norms while at the same time ensuring that a high level of discipline and efficiency is maintained among the personnel. In pursuance of these objectives, The Armed Forces Tribunal Bill was introduced in the Rajya Sabha on December 20, 2005. The Bill was referred to the Parliamentary Standing Committee on Defence (on December 27, 2005) and was subsequently passed and enacted as the Armed Forces Tribunal Act, 2007.

The Principal Bench of the Armed Forces Tribunal has been set-up in New Delhi, and the same was inaugurated in August 2009. Apart from the Jaipur Bench, there will eventually be regional benches located in Chandigarh,

Lucknow, Mumbai, Kolkata, Guwahati, Chennai and Kochi respectively. While the benches at Delhi, Jaipur and Lucknow will have 3 Courts each the other benches will have one court respectively. Each Court will of course be manned by one judicial member and one administrative member.

The Tribunal has been given original as well as appellate jurisdiction. In its original jurisdiction, the Tribunal has been empowered to hear and decide grievances pertaining to service-matters such as those relating to remuneration, retiral benefits, tenure, appointment, seniority, promotion and superannuation among others. Prior to the establishment of the Armed Forces Tribunal, defence personnel had no other option but to approach the High Courts or the Supreme Court under their writ jurisdiction to seek relief in such matters. With the creation of the Armed Forces Tribunal, they will now have access to an exclusive and specialized forum. The pending matters will also be transferred from the respective High Courts to the benches of the tribunal. However, disputes about aspects such as leave, postings and transfers will not be justiciable before the Tribunals. These subjects were left out since it was felt that the inclusion of the same could encourage vexatious litigation. Another safeguard against frivolous claims is that parties who approach the Tribunal must demonstrate that they have already exhausted the

remedies available to them under administrative rules and regulations.

In its appellate functions, the Tribunal has been empowered to decide appeals against the decisions given in Court-Martial proceedings. It has been given the power to enhance as well as commute sentences alongwith the authority to mitigate any punishments. Most importantly, the Tribunal will have the power to grant bail to persons placed in military custody. This is seen as a significant safeguard, since the tense environment that prevails during active operations or in a disturbed area may unconsciously lead to hasty decisions. However, there will be no right of appeal against the decisions given in summary court martial (SCM) proceedings, unless the punishment exceeds imprisonment for a period of three months.

In many cases, officers who serve as judges in court-martial proceedings may not strictly adhere to procedural safeguards such as giving a fair hearing to the accused person and due consideration of the materials on record. Hence, it is important for cases to be examined by impartial persons who are insulated from the routine pressures of military life. This is the rationale for appointing retired members of the higher judiciary to serve on the Armed Forces Tribunal. At the same time, there is also an essential need for specialised knowledge

about military conventions and practices to decide cases in a time-bound and expeditious manner. Therefore, the tribunal is composed of a nearly equal number of judicial members and administrative members. The administrative members are retired officers of senior ranks and those who have served in the Judge Advocate General (JAG) branch.

The Armed Forces Tribunal has been vested with the powers given to ordinary courts such as those of requiring the attendance of witnesses, the production of documents and the recording of evidence. In the exercise of its original jurisdiction over service-matters, the Tribunal is not bound to follow the Code of Civil Procedure, 1908 but the members must ensure that the principles of natural justice are strictly adhered to. Defence personnel can present their cases themselves or seek representation through a lawyer of their own choice.

Furthermore, the Tribunal will function as a court of record and will have the power to punish for contempt. It will exercise powers similar to those of a criminal court in respect of offences such as forgery, perjury and misrepresentation in the proceedings. Parties who will be aggrieved by the decisions of the Tribunal will have the option of approaching the Supreme Court by way of a petition seeking special leave to appeal (under Article 136 of the Constitution of India).

The Armed Forces Tribunal Act, 2007 has also conferred certain rule-making powers on the Central Government which have already been exercised to frame rules about aspects such as the appointment of members, the procedure to be followed in proceedings, the procedure for investigating allegations of misconduct by members and their removal among others. In short, there is a clear intent of ensuring substantive as well as procedural justice.

I would like to emphasize that the success of any Tribunal can be judged on three general parameters. The primary concern is that of ensuring institutional as well as personal independence when it comes to making decisions. Secondly, the members must demonstrate efficiency by maintaining a healthy disposal rate. The third parameter is that of proper enforcement of the orders and decisions. It is my sincere hope that the various benches of the Armed Forces Tribunal (AFT) will perform well on all of these counts. With these words I would like to express my gratitude for the opportunity to speak here today.

Jai Hind...