

**ARMED FORCES TRIBUNAL
CHANDIGARH BENCH BAR ASSOCIATION**

(Near Tank TCP, Chandimandir, District- Panchkula, Haryana-134107)

Ref No CJ1/1/2023

Dated: 03.08.2023

To:
Hon'ble Dr Justice DY Chandrachud
Chief Justice of India
Supreme Court of India
Tilak Marg
New Delhi -110 001

Subject: Regarding initiation of Contempt Proceedings against the Defence Secretary for direct interference in the administration of justice and judicial functioning of the Armed Forces Tribunal by way of his letter dated 28.07.2023, non-implementation of judicial orders and deliberate denial of financial support for staffing and smooth functioning of the Tribunal

Hon'ble Sir,

1. It is after much deliberation that we are addressing this request to you regarding a shockingly contemptuous communication addressed by the Defence Secretary to a judicial body, that is, the Armed Forces Tribunal (AFT) interfering in the administration of justice related to the judicial orders passed by the said tribunal, since if do not express our distress at such attempts to overreach the majesty of law, we would be failing in our duty as lawyers to protect the dignity of judicial institutions and also the sanctity of the rule of law, the hallmark of which in a democracy is the independence of judiciary and also of lawyers. The background and details are in the succeeding paragraphs.

2. The Chandigarh Bench of the Armed Forces Tribunal (AFT) is the largest and the busiest bench amongst all AFT Benches with the highest disposal rate and caseload since the inception of the AFT. Most of the cases being conducted in the bench belong to soldiers, disabled soldiers, old pensioners and widows. The Bench has passed many landmark orders to ameliorate the sufferings of such petitioners, and many of such judgments have been affirmed/upheld by the Hon'ble High Court and the Hon'ble Supreme Court, causing much discomfort to certain officers in the Ministry of Defence (MoD). Since beginning, an issue that has confronted the Chandigarh Bench is the non-compliance of its judgments and judicial orders and mindless filing of "Leave to Appeal" applications by the MoD seeking direct appeal to the Hon'ble Supreme Court by alleging a "point of law of general public importance" in each case by bypassing the Hon'ble High Court, thereby unnecessarily increasing the workload of the bench and causing anguish and financial dent to litigants. This attitude of the MoD is not new and is widely known and is reflected in the observations of the Hon'ble Punjab & Haryana High Court in its order dated 09.12.2014 passed in **CWP 25149/2014 Ex-Rifleman Rajender Singh vs Union of India**, strong observations of the AFT in **MA 2199/2016** in **OA 1635/2014 Yashwant Bharmouria vs Union of India** dated 01.08.2016 and recent order of the Hon'ble High Court dated 07.07.2023 in **CWP 14249/2023 Union of India vs Armed Forces Tribunal**, besides many orders passed by the Hon'ble Supreme Court.

3. Perhaps due to such non-compliance of thousands of orders, the bench here has taken a strict view and has sought the conditional attendance of senior functionaries of the MoD in many cases (with exemption in case the orders are complied), which has also been endorsed by the Hon'ble High Court in its order dated 07.07.2023 in **CWP 14249/2023 (supra)**. Moreover, the massive filing of appeals and non-compliance of orders of the AFT has also gained attention in the media and social media in recent months. This apparently has irked certain officers and has shockingly led to the issuance of the following communication by the D(AFT) Cell of the MoD **addressed to the Principal Bench of the AFT** on behalf of the Defence Secretary on 28.07.2023 asking it to present a report to the said officer by 5 PM:

"It is stated that Defence Secretary has directed that a report be prepared on the recent AFT Chandigarh decisions on pay/pension matters with analysis thereof. AFT (PB) is requested to furnish its comments/inputs regarding the same latest by 28.07.2023 (5 PM)"

4. As the above would reveal, the Defence Secretary has directed the AFT for preparation of an analysis of judicial decisions of the Chandigarh Bench on pay and pension matters, further asking the Principal Bench (PB) to furnish comments on the same by 5 PM as if the tribunal is a department functioning under him. It may be noted here that the Defence Secretary is a litigant before the AFT and is in fact Respondent No 1 in all cases being heard in the AFT, and such a "direction" and seeking "analysis" or "inputs" on the judicial orders passed by the AFT is direct interference in judicial functioning, and in a similar case **Income Tax Appellate Tribunal vs VK Agarwal (1999) 1 SCC 16** the Hon'ble Supreme Court had convicted the Secretary concerned for criminal contempt for sending communications to the Income Tax Appellate Tribunal (ITAT) and interfering with the judicial functioning of the tribunal.

5. **We strongly protest and object to the Defence Secretary passing directions and orders to a judicial body or treating the AFT as a department under the MoD while in reality it is meant to be an independent statutory tribunal governed by an Act of Parliament to render justice to serving and retired soldiers and their families.**

In fact, in terms of the law laid down by the Constitution Bench of the Hon'ble Supreme Court in **Union of India vs R Gandhi (2010) 11 SCC 1**, **Swiss Ribbons Pvt Ltd vs Union of India (2019) 4 SCC 17** and lately again in **Madras Bar Association vs Union of India (2021) 7 SCC 369**, the MoD cannot even be the parent administrative ministry of the AFT and its infrastructural and other support must come from the Ministry of Law & Justice or at best the Ministry of Finance, till the National Tribunal Commission is created as directed by the Hon'ble Supreme Court. It is humbly submitted that seeking analysis of judgments from a judicial body since adverse orders are being passed against an official litigant amounts to an absolute crossing of *lakshman-rekha* by the concerned officer and browbeating of a court and cannot be taken lightly by the legal community and must not be overlooked in any manner. This way, the tribunals, Hon'ble High Courts and the Hon'ble Supreme Court pass orders against various govt departments with far-reaching consequences almost every day, would that give a license to the concerned Secretaries to direct courts and tribunals to report to them with 'inputs', 'comments' and 'analysis'? This is absolutely uncalled for and unheard of.

6. We are also in receipt of a recent press release by the MoD dated 28.07.2023 (<https://pib.gov.in/PressReleasePage.aspx?PRID=1943688>) in which it has been stated that the MoD was not filing appeals in settled cases and was not indulging in non-compliance of orders. This statement in this press release is totally against the grim reality of the subject when we are personally aware that there are hundreds of "Leave to Appeal" applications filed by the MoD seeking filing of direct appeals to the Hon'ble Supreme Court, bypassing the Hon'ble High Court, in simple covered matters disposed of in terms of settled law. The press release is also contrary to the following recent observations of the Hon'ble Supreme Court dated 25.03.2022 in Civil Appeal Diary No 10713/2021 **Union of India vs Piyush Bahuguna**:

"We must observe and express our displeasure at the manner in which the appellants have been filing appeals against grant of disability pensions, even where the legal issue is settled".

7. Even the statement on compliance of the orders in the said press release is factually and ethically incorrect since thousands of contempt/execution applications are pending in all benches of the AFT. Some of the judgments passed 5 to 6 years back have also not been implemented without even any further challenge or stay from the Hon'ble High Court or the Hon'ble Supreme Court, thereby attempting to reduce judicial orders to wastepaper totally lowering the majesty of law and the concept of justice.

8. While the Prime Minister, Law Minister and even the Learned Attorney General and Solicitor General have stressed upon reduction of litigation by the government and have made efforts towards the same, officers of the MoD continue to misguide the hierarchy and continue to increase litigation and are now interfering in judicial processes. It is well possible that such officers have clouded the mind of the Defence Secretary also and have not informed him about the correct picture of the state of affairs. We have nothing personally against him and this issue is not about personalities but propriety. The recent press release which is in direct contravention of the observations of the Hon'ble Supreme Court in **Piyush Bahugana** (supra) is a proof of the same. Is the officer who drafted the press release implying that the Hon'ble Supreme Court was wrong in its observations? Another proof of the excessively litigious nature of the MoD as compared to other ministries is the fact that as a recent answer to a Parliamentary question discloses, there are 87543 cases involving the MoD pending in various courts while the figure for the Ministry of Home Affairs (MHA) stands at only 23012.

9. The control of the MoD over the infrastructure, finances and appointments in the AFT, which is anyway against the law laid down in **R Gandhi, Swiss Ribbons and Madras Bar Association** (supra) has led to judicial work coming almost to a standstill with appointments of staff for the tribunal not being made and finances for daily functioning not being released which now seems is only because of the fact that the tribunal is perceived to be passing orders against "govt policy" by the MoD. The Chandigarh Bench faces an extreme staff and financial crunch and the same seems to be the position in other benches too. The Members of the AFT too are facing extreme shortage of personal staff and absence of resources and basic comforts. It is understood that even the

Chairperson of the Tribunal has only been given a tenure of 3 years (extendable on reappointment), whereas as per law, the tenure should have been minimum 5 years. The concept of reappointment also affects the independence of judicial functioning and hence was adversely commented upon by the Constitution Bench in **Madras Bar Association vs Union of India (2014) 10 SCC 1**. Such actions of controlling and rationing the staff, infrastructure and resources of the AFT are a way of indirectly controlling the judicial functioning of the tribunal which is being thought to be some inferior body of the MoD and which has now come out in the open in terms of the communication dated 28.07.2023. Not only this, it is understood that the Army's Judge Advocate General's branch has been tasked to hold sensitisation/training sessions for Administrative Members of the AFT. It belies reason as to how could the largest litigant before the tribunal sensitise the adjudicators about the cases the said adjudicators are handling. If this is correct, then the MoD must come clean on this issue with full disclosure, and cease any such an unethical practice forthwith. There must be no case-related interaction between Administrative Members and official litigants except within the precincts of the courtroom in the presence of all parties.

10. The above sentiment of the MoD regarding the AFT is, however, not a new phenomenon. The MoD has always felt that courts and tribunals cannot pass orders against "govt policy", forgetting in the bargain that obviously only that person would approach a court or a tribunal such as the AFT or CAT, who has not been granted relief as per interpretation of the govt functionaries under existing policy, and in that sense, every single order passed by any court or tribunal is bound to be against "govt policy". This sentiment of the MoD also clearly came out in Para 3.11/3.12 of the 18th Report of the Standing Committee on Defence (2012-2013) where a Secretary level officer of the MoD made the following comments:

"...The Hon'ble Tribunal may, therefore, avoid impinging on policy matters...It must also be emphasized that disregard of Government Policy by AFTs is not a general practice but limited to 1-2 Benches only."

11. The Ministry of Law & Justice and the Learned Attorney General were however opposed to the views of the MoD in the said Report. Even more instructive was the comment of a representative of the Ministry of Law & Justice on the MoD's attitude towards the AFT in the following terms (Para 4.6):

"I have seen the files that the Ministry of Defence is opposing the move to leave the control of AFT. They do not want to leave the control. So far as filling of appeal is concerned, I think against almost each and every matter the appeals are filed"

12. The above makes it even more imperative that the MoD be immediately divested from any kind of hold or control over the AFT in terms of the law laid down by the Constitution Benches of the Hon'ble Supreme Court.

13. It is hence requested Hon'ble Sir, that *suo-moto* cognizance may kindly be taken of this letter-petition and appropriate proceedings be initiated against the Officer concerned for directly interfering in the judicial functioning of the AFT by way of a communication which is not only contemptuous, but also illegal, unethical and against the spirit of Article 50 of the Constitution of India, besides contravening **Basic Principles on the Independence of the Judiciary** endorsed vide the UN General Assembly resolutions 40/32 of 29.11.1985 and 40/146 of 13.12.1985 and **Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers** endorsed by the UN Human Rights Council resolution 44/8 of 14.07.2020.

14. As the leaders of this Bar, as stated in the opening paragraph, we thought we would be failing in our duty if we do not bring to your notice, your Lordship being the head of the legal and judicial family, this occurrence which has shocked our conscience and has brought disquiet amongst many of the members of the bar and the legal community who must remain at the forefront to zealously protect the independence of the legal and judicial system of the country.

Submitted with all humility, for your consideration please.


RS Panghal, President
Phone- 7009854516




Ajay Sheoran, Secretary
Phone- 9888693785

Copy for necessary information and action forwarded to:

Hon'ble Chairperson, Armed Forces Tribunal, Principal Bench, West Block-VIII, Opposite Mohan Singh Market, Sector-1, RK Puram, New Delhi- 110 066: The Hon'ble Chairperson is also requested to take a strong view of the attempts to browbeat a judicial body into submission. Being head of the AFT family, we expect the Hon'ble Chairperson to resist such attempts and ensure that the tribunal or any of

its members do not cower down or weaken in the wake of such blatant attack on judicial independence. The institution must not capitulate even if there are veiled threats or pressure of stoppage of financial support.

Hon'ble Judicial Member-cum-Head of Department, Armed Forces Tribunal, Chandigarh Regional Bench, near Tank TCP, Chandimandir, District Panchkula, Haryana- 134 107: With the same request as above.

Hon'ble Raksha Mantri, Room No 104, South Block, New Delhi- 110 011: For your information since you are being provided a totally incorrect picture by your officers on this subject.

Hon'ble Minister of Law & Justice, Room No 402 (A), A-Wing, Shastri Bhawan, New Delhi- 110 001: For your information regarding the excessive litigation against National Litigation Policy by the MoD and interference in judicial bodies.

President, Supreme Court Bar Association, SCBA Office, Supreme Court of India, Tilak Marg, New Delhi- 110 001: With a request for your intervention being the bar of the Apex Court, and also for your information on the blatant attempts of interference in judicial functioning of tribunals.

President, Punjab & Haryana High Court Bar Association, High Court, Sector 1, Chandigarh- 160 001: With a request for your intervention being the senior bar of the region.

President, Armed Forces Tribunal (Principal Bench) Bar Association, West Block-VIII, Opposite Mohan Singh Market, Sector-1, RK Puram, New Delhi- 110 066: For your information and necessary action please.