

Role of Armed Forces Tribunal and Appeals from Court-Martial

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Evolution of Tribunals

- Tribunal- Meaning & Evolution
- Distinction between Court and Tribunal
- Attributes of Tribunals
- Reasons for emergence of Tribunals
- Position under the Constitution
- Different kinds
- Status of Tribunals

The ARMED FORCES TRIBUNAL ACT, 2007

- Came into force with effect from the June 15, 2008
- **Objects** - To provide for quicker and less expensive justice to the members of the three services namely, Army, Navy and Air Force.
- 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
- to provide for appeals arising out of orders, findings or sentences of court martial held under the said Acts

AFT-Establishment & Composition

- consists of a Chairperson and such number of Judicial and Administrative Members as the Central Government may deem fit
- Principal Bench of the Armed Forces Tribunal had started functioning in New Delhi from the August 10, 2009
- Regional Benches of the Tribunal functions at ten places, namely, Jaipur, Chandigarh, Lucknow, Guwahati, Kolkata, Chennai, Kochi, Srinagar, Jabalpur and Mumbai
- the circuit Benches are also functioning

Qualifications for appointment of Chairperson and other Members (S.6 ,7 & 8)

- **Chairperson**- Retired SC judge /CJ of a HC
- **Judicial Member**-Serving or Retired HC judge
- **Administrative Member** - held / holding rank of Major General or above for min. three years in Army or equivalent rank in Navy or/ Air Force & min. one year experience as Judge Advocate General (JAG) in Army/Navy /Air Force, and not below rank of Major General, Commodore and Air Commodore respectively.
- **Appointment**- by President after consultation with the Chief Justice of India (S.7)
- **Term of office (S.8)**- 4 years & eligible for reappointment
- **Age of retirement**: 70 years for Judge of SC/65 years for CJ of HC in case of chairpersonfor members 65 years

Jurisdiction, Powers and Authority of AFT

(Ss.14-20)

- 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** (S.14)
- similar to Adm. Tribunals under ATA,1985 &u/A . 323-A of Constitution
- The Tribunal shall decide both questions of law and facts that may be raised before it.

- shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 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 , 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.

Jurisdiction, powers and authority in matters of appeal against **Court Martial**(S.15)

- **Court Martial [S.3(g)]**- means a **court martial** held under the Army Act, 1950 or the Navy Act, 1957 **including** the disciplinary Courts constituted under the Act or the Air Force Act, 1950
- Under Army Act- "court- martial" means a court- martial held under this Act - **U/S 3(vii) –Similar definition under the other two Acts**
- When a trial is conducted by a military court it is called **court martial**.

What-actually-happens-in-Indian-army-court-martial

- The military law has been enacted by the Parliament as per the provisions of the Indian Constitution .
- The basic Army law is embodied in the Army Act (Navy Act/ Air Force Act too are there). The Act is complemented / supplemented / amplified by Army Rules , Defence Services Regulations — Regulation for the Army , various other Defence Services Regulations , Special Army Instructions , Army Instructions , Special Army Orders and Army Orders. In addition nearly most of the provisions of civil law are also applicable .
- The Judicial system in the military generally is on the same pattern as the Civil . However unlike the Civil system , Indian military does not have any standing courts for dispensation of justice .
- With respect to a military personnel , all offences committed by him may be tried by a military court except murder and rape . Even these may be tried by a military court in case the offence is committed in field/ operational area or against another person covered by the Act . The jurisdiction whether it will be military or civil court will be decided by the military . In case of dispute matter may be referred to the Central Govt .

Ref: Awadhesh Kumar, former Colonel at Indian Army
@<https://www.quora.com/What-actually-happens-in-Indian-army-court-martial>

Types of Court Martials :

- ❑ Summary Court Martial
- ❑ District Court Martial
- ❑ General Court Martial
- ❑ Summary General Court Martial .
- Rules of conduct can be found in detail in the Laws concerned and judgments

- **Difference between Summary Court Martial and the Summary General Court Martials** - A Summary Court Martial can be ordered only by the Commanding Officer of the individual (Sepoy to Havildar only) of minimum Lt Col rank . The CO convenes the court , then himself becomes the judge , examines the accused and witnesses and can award punishment the highest of which is dismissal from service with one year imprisonment .
- The procedure entails just one sitting . Judgment is promulgated and implemented (i.e. taken into custody and handed over to civil police) at once though the individual is handed over papers to appeal within a given time frame to the next superior authority . Also the Judge Advocate Branch at Command HQ later goes through each case to see that law has been followed by the Commanding Officer . At times the punishment is reversed and individual even reinstated .

- Summary General Court Martial takes place in operational areas / war by isolated detachments - Minimum three officers constitute the court - Trial is swift and even death sentence may be awarded for cases involving treason , desertion of a post , sleeping on sentry duty etc- In war there will be no appeal and sentence carried out by firing squad forthwith (serious!!!)
- District Court Martials (DCM) - convened for trial of personnel up to Junior Commissioned ranks - by Brigadiers in Command vested with such powers specifically - There will be minimum three officers as judges appointed by name with a Judge Advocate branch officer in attendance - Out of three officers , the senior most is the Presiding Officer - Dismissal and up to 3 years imprisonment may be awarded- Verdict has to approved by the laid down authority - Appeals may be made in AFT (not High Court / Supreme Court)...from AFT to HC/SC!!!

- **General Court Martial (GCM)** is convened by Major General and above officers exercising Command powers ie Divisional commanders and above vested with such powers specifically . A GCM convened by appropriate authority can try all ranks ie for a Lt General it has to be COAS . The court will have 5 officers with JAG officer named specifically . It All 5 officers have to be senior in rank or equal to the accused . Seniormost will be the Presiding Officer. GCM has powers to award 14 years life sentence or even death sentence . Death sentence must be mandatorily reviewed by the Supreme Court .

- The proceedings before a DCM or GCM are similar to any Civil court . However the Accused has the right to oppose against inclusion of any of the Judges ...that judge will be replaced .Both the Prosecution and Defence are represented by qualified lawyers. Witnesses depose and are cross examined .The JAG officers sits with the Judges but only as an advisor on points of law and procedure . The Presiding Officer is the head of the bench . Proceedings are open to all unless it is of secret nature . Verdict is given after the trial is completed just like the civil and may take months (but does not drag on like civil on flimsy grounds). Each Judge has one vote Guilty or Not Guilty . Voting is on done for each of the Charges. Punishment is also decided accordingly by the bench . The laid down authority has to confirm the verdict . Such authority may be the Army Commander / COAS or the Defence Minister depending on the rank of tge accused .

AFT- Jurisdiction

Jurisdiction in Civil Matters

- Disputes of Allotment/ Vacation/ Eviction of Government Quarters/ Government Hired Accommodation
- Disputes Regarding Medical Facilities & Claims of Medical Reimbursement
- Disputes Regarding Date of Birth
- Disputes Regarding Grant, Refusal or Recovery of Allowances etc
- Sec.36- Proceedings before Tribunal to be judicial proceedings

AFT- Jurisdiction

In Criminal Matters

- Jurisdiction Regarding Bail
- Jurisdiction Regarding Court-Martial
- Jurisdiction Regarding Summary Trials etc

Jurisdiction in Service Matters

- Regarding Dismissal, Removal, Termination and Censure
- Regarding Enrolment/Grant of Commission
- Ad-hoc Appointments / Regularization
- Dispute of Pay and Allowances, Pensionary Benefits and Compensation Jurisdiction
- With Regard to Violation of Principles of Natural justice
- Disputes Regarding Annual Confidential Reports etc

No Retrial if conviction is quashed Sec.16

- Sec. 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. (Application of protection against Double Jeopardy)

Power to punish for contempt Sec.19

- (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 (70 of 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.

Procedure followed by AFT

- **Exhaustion of Remedies-** insisted
- **Limitation-** application against any order to be filed **within 6 months** (subject to condonation of delay)
- **Procedure and powers of the Tribunal.**—(1) The Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the **principles of natural justice** and subject to the **other provisions of this Act and any rules made thereunder**, the Tribunal shall have the power to lay down and regulate its own procedure including the fixing of place and time of its inquiry and deciding whether to sit in public or in camera **[Sec.23]**
- **Right of applicant or of appellant to take assistance of a legal practitioner** and of Government, etc., to appoint counsel. **Sec. 25**
- Condition as to making of interim order- **Sec.26**
- Decision to be by majority - **Sec.28**

Appeal from AFT

- **Appeal to Supreme Court** - Sec.30
- **Leave to appeal.**—(1) An appeal to the Supreme Court shall lie with the leave of the Tribunal; and such leave shall not be granted unless it is certified by the Tribunal that a point of law of general public importance is involved in the decision, or it appears to the Supreme Court that the point is one which ought to be considered by that Court...
- (2) An application to the Tribunal for leave to appeal to the Supreme Court shall be made within a period of thirty days beginning with the date of the decision of the Tribunal and an application to the Supreme Court for leave shall be made within a period of thirty days beginning with the date on which the application for leave is refused by the Tribunal... **Sec.31**

Conclusion

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