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**STANDING COMMITTEE ON DEFENCE  
(2012-2013)**

**(FIFTEENTH LOK SABHA)**

**MINISTRY OF DEFENCE**

**THE ARMED FORCES TRIBUNAL (AMENDMENT) BILL, 2012**

**EIGHTEENTH REPORT**



**LOK SABHA SECRETARIAT  
NEW DELHI**

**March, 2013 / Phalguna 1934 (Saka)**

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*Presented to Lok Sabha on*      **20.03.2013**

*Laid in Rajya Sabha on*      **20.03.2013**



**LOK SABHA SECRETARIAT**

**NEW DELHI**

**March, 2013 / Phalguna 1934 (Saka)**

## CONTENTS

	PAGE.
Composition of the Committee (2012-2013).....	(iii)
Introduction .....	(v)

### REPORT

Chapter-I	Introductory.....	01
Chapter-II	Proposed Amendment to Section 8.....	04
Chapter -III	Proposed Amendment to Section 19.....	12
Chapter-IV	Related Issues .....	28
Annexure- I	List of individuals/experts who appeared before the Committee/submitted memoranda.....	35
Annexure-II	(Bill No. XXXII of 2012).....	36

**Minutes of the sittings are not appended with the cyclostyled version of the report.**

## COMPOSITION OF THE STANDING COMMITTEE ON DEFENCE (2012-13)

Shri Raj Babbar - Chairman

### MEMBERS

#### LOK SABHA

- \* 2. Shri Satpal Maharaj
3. Shri Sameer Bhujbal
- \*\*4. Shri Adhir Chowdhury
5. Shri Kamal Kishor `Commando`
6. Shri R. Dhruvanarayana
7. Shri Varun Gandhi
8. Shri P. Karunakaran
9. Shri Mithilesh Kumar
10. Shri Sidhant Mohapatra
- #11. Shri Inder Singh Namdhari
12. Shri Saugata Roy
13. Shri Asaduddin Owaisi
14. Shri A.T. Nana Patil
15. Shri C.R. Patil
16. Smt. M. Vijaya Shanthi
- @17. Shri Madan Lal Sharma
18. Smt. Mala Rajya Laxmi Shah
19. Shri Mahabali Singh
20. Rajkumari Ratna Singh
21. Shri Uday Singh
- ##22. Shri Virbhadra Singh
23. Shri R. Thamaraiselvan
24. Vacant
25. Vacant
26. Vacant

#### RAJYA SABHA

27. Shri Pankaj Bora
28. Shri Naresh Gujral
29. Shri Prakash Javadekar
30. Shri Hishey Lachungpa
31. Shri Mukut Mithi
32. Shri Mukhtar Abbas Naqvi
33. Dr. E.M. Sudarsana Natchiappan
34. Shri C.M. Ramesh
35. Shri T.K. Rangarajan
36. Shri Devender Goud T.

\*ceased to be a member w.e.f. 02.11.2012

\*\*ceased to be a member w.e.f. 22.10.2012

# ceased to be a member w.e.f. 13.12.2012

@ ceased to be a member w.e.f. 09.01.2013

## ceased to be a member w.e.f. 01.01.2013

## **SECRETARIAT**

- |                        |   |                      |
|------------------------|---|----------------------|
| 1. Dr. R.K. Chadha     | - | Additional Secretary |
| 2. Shri R.K. Jain      | - | Joint Secretary      |
| 3. Shri D.S. Malha     | - | Director             |
| 4. Shri Sanjeev Sharma | - | Additional Director  |
| 5. Shri Rahul Singh    | - | Committee Officer    |

## INTRODUCTION

I, the Chairman of the Standing Committee on Defence (2012-13), having been authorized by the Committee to present the Report on their behalf, present this Eighteenth report on 'The Armed Forces Tribunal (Amendment) Bill, 2012.'

2. One of the functions of the Standing Committee, as laid down in Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha, is to examine such Bills pertaining to the concerned Ministry/Department as are referred to the Committee by the Chairman, Rajya Sabha or the Speaker, as the case may be, and to make a report on the same to the House.

3. 'The Armed Forces Tribunal (Amendment) Bill, 2012' was introduced in Rajya Sabha on 13 August, 2012 and was referred to the Standing Committee on Defence (2011-12) by the Hon'ble Speaker for examination and report on 28 August, 2012. As the term of the Committee was expired on 30 August, 2012, the re-constituted Committee took up examination of the Bill.

4. The Standing Committee on Defence (2012-13) had the briefing of the representatives of the Ministry of Defence on 20 November, 2012. The Committee took oral evidence of the Vice-Chiefs of the three Services and also heard the views of the representatives of the Indian Ex-services League on 04 December, 2012.

5. Thereafter, the Committee took oral evidence of the Administrative Members of the Armed Forces Tribunal and also had benefit of views of non-official experts on 27 December, 2012. The Committee took oral evidence of Secretary, Ex-Servicemen Welfare also on the same Bill. The Committee also invited representatives of Ministry of Law and Justice to clarify certain points on 12 February, 2013 and held a joint sitting with representatives of Ministries of Defence and Law & Justice on 21 February, 2013.

6. Internal meetings were also held to consider various view-points suggested by the representatives of the Ministry of Defence, representatives of Armed Forces and various stakeholders.

7. The Draft Report was considered and adopted by the Committee at their sitting held on 15 March 2013.

8. The Committee were greatly benefitted from the views/suggestions of various individuals/associations/experts on various provisions of the Bill. They wish to express their thanks to the officers of the Ministry of Defence, Ministry of Law and Justice, Administrative Members of the Tribunal and experts for appearing before the Committee and furnishing the material and information which the Committee desired in connection with the examination of the subject.

9. For facility of reference and convenience, the recommendations/observations of the Committee have been printed in bold letters in the body of the report.

**New Delhi;  
15 March, 2013  
24 Phalguna, 1934 (Saka)**

**Raj Babbar  
Chairman  
Standing Committee on Defence**

## **CHAPTER-I**

### **REPORT**

#### **INTRODUCTORY**

The Armed Force personnel of the three services are subject to the Indian Army Act, 1950, Indian Air Force Act, 1950 and the Navy Act, 1957. The Armed Forces Tribunal Act was enacted in 2007 to provide for adjudication or trial by the 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 and also to provide for appeals arising out of orders, findings or sentences of court martial held under the said Acts and for matters connected therewith or incidental thereto.

1.2 The Armed Forces Tribunal Act, 2007 came into force with effect from the 15th June, 2008 with a view to provide for quicker and less expensive justice to the members of the three services (Army, Navy and Air Force). The Principal Bench of the Armed Forces Tribunal had started functioning in Delhi from the 10th August, 2009. Regional Benches of the said Tribunal at eight places, namely, Jaipur, Chandigarh, Lucknow, Guwahati, Kolkata, Chennai, Kochi and Mumbai, have also started functioning subsequently. There are at present fifteen courts in nine Benches. Each court has a Judicial Member and an Administrative Member.

1.3 Prior to the enactment of the Armed Forces Tribunal Act, the system of administration of justice in the Armed Forces provided for submission of statutory complaints against grievances relating to service matters and pre and post confirmation petitions to various authorities against the findings and sentences of courts-martial. There was no independent adjudicatory forum for hearing complaints of defence personnel relating to the service matters and appeals against the judgement of Court Martial.



1.4 The Ministry of Defence has in their background note on the Armed Forces Tribunal (Amendment) Bill, 2012, given reasons for bringing forth two amendments to the Armed Forces Tribunal Act, 2007. In regard to first amendment concerning the enhancement of term of office from four to five years for the Chairperson or a Member of the Tribunal and age of Judicial Member in case he has been Chief Justice of High Court from Sixty five to Sixty Seven years, the provisions have been picked up from the National Green Tribunal Act, 2010. This would avoid repeated selection of Members for short tenures so as to provide the Tribunal with stability and continuity. In regard to the second amendment concerning conferment of powers of civil contempt, the Ministry has informed that the Armed Forces Tribunal, Principal Bench, had brought out that the AFT Act, 2007, in its present form did not contain any provision for the execution of the order finally passed by the Tribunal. Even the arrangements made in Section 29 of AFT Act, 2007 which stated that "subject to the other provisions of this Act and the rules made thereunder, the order of the Tribunal disposing of an application shall be final and shall not be called in question in any court and such order shall be executed accordingly" did not operate as a string of caution unless powers were conferred to get its orders enforced. Further, there was no other provision in the Act to get its order complied with, in case of failure to do so. As the existing power to punish for contempt covers only for criminal contempt, this provision could not be used to enforce its orders.

1.5 Under the existing provisions contained in section 8 of the Armed Forces Tribunal Act, the Chairperson or a Member of a Tribunal shall hold office for a period of four years from the date on which he enters upon his office and shall be eligible for reappointment. However, no Chairperson shall hold office as such after he has attained – (a) in case he has been a Judge of the Supreme Court, the age of seventy years; and (b) in case he has been the chief Justice of a High Court, the age of sixty-five years. It further provides that the Members, both judicial and Administrative, shall hold office until they attained the age of sixty-five years. The Judicial Members are not completing their term of office and thus vacancies are arising frequently on regular basis in the Tribunal.

1.6 It is, therefore, proposed to change the term of office of the Chairperson and Members from four years to five years from the date on which they enter upon their office and shall not be eligible for reappointment. It is further proposed to enhance the

age limit of the Chairperson, in case he has been the Chief Justice of a High Court, from sixty-five years to sixty-seven years. In order to avoid repeated selection of Members for short tenures so as to provide the Tribunal with stability and continuity, it is also proposed to enhance the age limit of Judicial Member from sixty-five years to sixty-seven years.

1.7 Section 19 of the Armed Forces Tribunal Act, 2007 enables the Tribunal to punish for criminal contempt only and not for civil contempt. The aforesaid Act in its present form does not contain any provision for the execution of the orders finally passed by the Tribunal as a result of which cases involving serious questions of law of public importance are to be taken to the Supreme Court for appropriate directions. It is, therefore, proposed to confer powers of civil contempt to the said Tribunal in addition to the existing powers of criminal contempt. The proposed amendment would give the same jurisdiction, powers and authority to the said Tribunal in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts Act, 1971, shall have effect subject to certain modifications mentioned in the Bill.

1.8 The Clause wise and issue wise analysis of the proposed amendments in the two Clauses of the Bill have been brought out in the succeeding Chapters of the Report.

1.9 During the course of examination, the Committee was also apprised of certain other issues which they treat as related matters. The Committee have accordingly taken note of such suggestions and the same have been deliberated in Chapter-IV of this Report.

## CHAPTER – II

### Proposed Amendment to Section 8

2.1 Clause 2 of the Bill provides for substitution of new Section for Section 8. By virtue of this amendment, it has been proposed to amend the term of office of Chairperson or member from four to five years and upper age limit of Judicial Member in case he has been the judge of High Court from sixty-five to sixty-seven years. The Ministry has also proposed that Chairperson or a Member shall not be eligible for re-appointment. The Section 8 of the Act reads as under:

'Term of office

The Chairperson or a Member shall hold office for a term of four years from the date on which he enters upon his office and shall be eligible for re-appointment :

Provided that no Chairperson shall hold office as such after he has attained, \_

(a) In case he has been a Judge of the Supreme Court, the age of seventy years; and

(b) In case he has been the Chief Justice of a High Court, the age of sixty-five years:

Provided further that no other Member shall hold office as such Member after he has attained the age of sixty-five years.'

2.2 The Ministry has proposed the following amendment in the Act, which states as under:-

'Term of office of Chairperson or Member

The Chairperson or a Member of the Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office but they shall not be eligible for reappointment: Provided that no Chairperson shall hold the office after he has attained -

(a) in case he has been a judge of the Supreme Court, the age of seventy years; and

(b) in case he has been the Chief Justice of a High Court, the age of sixty-seven years.

Provided further that no Judicial Member shall hold the office as such Judicial Member after he has attained the age of the sixty-seven years:

Provided also that no Administrative Member shall hold office as such Administrative Member after he has attained the age of sixty-five years.'

2.3 As such, while the age of Chairperson and Judicial Member is proposed to be enhanced, there is no change in the age of an Administrative Member.

2.4 The information collected by the Committee in the form of Memorandum from various stakeholders and evidence tendered before them would, summarily reveal that there was near consensus on both these issues.

2.5 To commence their examination of the subject, the Committee thought prudent to have the briefing of the representatives of the Ministry of Defence to fully understand the proposed amendments. In this regard, Defence Secretary stated:

"Under the existing provisions the Chairperson or a Member has a term of office of four years and is eligible for re-appointment. Further the Chairperson can hold office upto the age of seventy years in case he has been a Judge of the Supreme Court and upto the age of sixty-five years in case he has been the Chief Justice of a High Court. That is the qualification of the Chairperson of the Tribunal. Either he can be a retired Judge of the Supreme Court or a retired Chief Justice of the High Court. A Member can hold office upto the age of sixty-five years. It may be mentioned here that the Judges of the Supreme Court retire at the age of sixty-five years whereas Chief Justice of a High Court, Judges of the High Court retire at the age of sixty-two years. The Administrative Members, who are drawn from three defence services, retire at the age of sixty years. Under the existing provisions, Chairperson AFT, if he is a retired Judge of the Supreme Court and an Administrative Member, who are from services, are able to complete their tenure of four years and also become eligible for re-appointment. However, Judicial Members are unable to complete their term of four years as they join AFT only after they retire from the respective High Courts at the age of sixty-two years. So, they have only three years. They are not becoming eligible for the re-appointment in AFT as the retirement age in AFT is sixty-five years. Thus vacancies of Judicial Members are arising frequently on a regular basis. It is thus proposed to amend Section 8 relating to "Terms of office" of AFT Act to enhance the term of office of Chairperson and Members from the existing four to five years with the condition that they will not be eligible for re-appointment to allow them a full tenure of five years in one stretch. Further it is proposed to enhance the age limit of Chief Justice or Judges of High Courts to hold office of Chairperson, Judicial Members in AFT by two years from sixty-five to sixty-seven years to allow them a full tenure of five years."

2.6 In this connection, a representative of the Ministry of Defence during the briefing intimated that in order to enable the Tribunal to have stability and to avoid frequent selection of Members the amendment to enhance the age limit upto sixty-seven years has been recommended by the Ministry. This parallel has been drawn from the Green Tribunal and there were no other parallels available.

2.7 When the opinion of the Vice-Chief of Army Staff was sought in this regard, he said:

"The Hon'ble Supreme Court Judge retires at sixty-five. He may be given five years. So, it becomes seventy. Hon'ble Judge of a High Court retires at sixty-two and his retirement age as Judicial Member has been extended from sixty-five to sixty-seven. So, he also gets five years. It is thus fair that the Hon'ble Judicial as well as Administrative Members get the same amount of term. The overall tenure of five years or the upper age limit whichever is the earlier is very fair for all the Judicial Members as well as for the administrative members of the Tribunal. Thus, it is a very fair rule which they have come up with in the proposed amendment. There was an anomaly earlier and were not getting the Judicial Members. The main problem was with the Judicial Members. Now, it is an absolutely a fair rule....."

2.8 Rendering the similar views before the Committee, the Vice-Chief of Naval Staff stated:

"With regard to the views of the Naval Headquarters with respect to the first amendment which is regarding the extension of the tenure of members from four to five years as well as the extension of the age from sixty-five years to sixty-seven years, the Naval Headquarters' views are in agreement and this is to ensure that we have a longer tenure and some stability in the people who are joining it. The Judicial Member may join at sixty-two or sixty-three years of age. Then, at least he will have one full tenure. This is the basis of our agreement with the first point....."

2.9 Vice-Chief of Air Force Staff was also of the same opinion on this issue:

"The views of the Air Force are in agreement with the views of the Army and the Navy. In the enhancement of terms of engagement, we believe that it should be increased from four years to five years and age from sixty-five years to sixty-seven years. The reason is that this is the first tenure for most people who are in the tribunal. They have done a good job. We believe this experience could be utilised gainfully for another year for each of these people. In addition, since people will get only one term, it is only right that they get the term that takes their experience to its logical end."

2.10 One of the representative of Indian Ex-Services League stated as under :

"The ages, which have been mentioned, are seventy, sixty-seven and sixty-five for the Supreme Court Judges, Judges of the High Courts and the Administrative Members. What we need to appreciate is that members do not retire from one place and are appointed in the AFT the next day. There is a time lag; there is a selection procedure and that takes time. Therefore, the person is losing time and by the end of it, he may be serving only for four years or four years and three months and so on. This lacuna needs to be changed. If retirement ages are laid down, it defeats the very purpose of stability, as I had mentioned earlier. So, we have two suggestions in this regard. One is, lay down fixed five year tenure for all members, whether they are Judicial Members or Administrative Members....."

2.11 The Administrative Member of Principal Bench of the Armed Forces Tribunal (AFT) was also in agreement with the proposed amendment. He informed the Committee that :

"As per the Act, the Tribunal has two members, a Judicial Member and a service member, known as the Administrative Member. As far as the Judicial Member is concerned, he is a retired judge of the High court. A High Court judge retires at the age of sixty-two and as per the Act his tenure is four years or the age of sixty-five years whichever is earlier. As such most of the Judicial Members who come into the fold of the tribunal have just about two and a half years or at best three years left for their service with the tribunal. Therefore, it is not very attractive for them and they have other outlets and the situation today is that out of the fifteen Judicial Members we are functioning with only eight Judicial Members. There is a deficit of seven Judicial Members. Like, one who was appointed couple of months ago in Jaipur, he has already put in his resignation because he has got a better opportunity in terms of CAT where he goes to his home town and he has his full five year tenure. So, he prefers that. In this manner, as of now, we are functioning at fifty per cent of our strength. So, what I feel personally is that urgency of this amendment is more to ensure that it becomes viable for a Judicial Member to come and spend time with us, that is do his full tenure of five years. That was the spirit behind this amendment."

2.12 He further stated :

"If you see the provisions in the main Act, it says that there is a tenure subject to re-appointment till the age of sixty-five years. We consider five-year is a good enough tenure. That is why, we did not put the clause of re-appointment. So, that is the thinking behind the amendment."

2.13 Administrative Member of the Regional Bench of Chandigarh where maximum number of cases were pending for disposal, in regard to the tenure and age informed the Committee as under:

"To begin with, the point the Hon. Member made is whether the tenure is more important or the age, I would say that a five-year tenure is a very reasonable tenure. Age comes into play only because with all other appointments made by the Government, by the President, age is always a factor. But I would say that a five-year tenure is more important. Even a serving member gets appointed at the age of sixty-one or sixty-two. As long as he gets a tenure of five years, it is a meaningful tenure."

2.14 The Secretary (LD) in the Ministry of Law and Justice further clarified the age related issue as under:

"I do not think there is any contradiction because a judge of the Supreme Court retires at the age sixty-five. So, to give him a tenure of five years, he has to continue until seventy years and in the case of a Chief Justice of a High Court, who retires at the age of sixty-two years, sixty-seven years of age is provided."

2.15 Other non-official experts/stakeholders were also of the same view. However, one of the expert who retired as Judge Advocate General (JAG), {Major-Gen. Nilendra Kumar JAG (Retired)} was of the opinion that increasing tenure from 4 to 5 years will bring in complacency in the members giving them security of tenure.

2.16 One Ex-Air Force Officer {Wing Commander U.C. Jha (Retired)} also echoed the above view in his memoranda and stated that assured five years tenure to a retired personnel will lead to complacency and Chairperson may continue with four years but tenure of members should be reduced to 3 yrs.

2.17 Another expert {Lt. Col. Satwant Singh (Retd.)} was also of the opinion that this tenure should be of five years or sixty-seven years of age whichever is earlier.

2.18 One more expert who was practising as a lawyer in the Armed Forces Tribunal Court {Lt. Col. Rajiv Manglik (Retd.)} stated that both the members should have sixty-seven years of age and 5 years of tenure, whichever is earlier, otherwise, it will attract Article 16 of the Constitution.

2.19 Assistant Solicitor-General of India (AFT) Principal Bench {Col. R. Balasubramanium (Retd.)} by way of memorandum submitted that the term of office of the Chairperson and Members should be enhanced to five years with upper age ceiling of seventy years for Chief Justice, sixty-seven years for Judicial Members and sixty-five years for Administrative Members.



**2.20 The Committee note that pursuant to the coming into force of the Armed Forces Tribunal Act, 2007 w.e.f. 15 June, 2008, a need has been felt by the Ministry of Defence for bringing two amendments. The stated intention behind these two amendments is to provide the Tribunal with stability and continuity and also to provide teeth by way of conferment of powers of civil contempt so that the Tribunal can exercise the same jurisdiction, powers and authority in respect of civil contempt as a High Court.**

**2.21 The Committee find that the first amendment proposed in the Bill vide Clause – 2 is in regard to fixing of the tenure of the Chairperson or the Member of the Tribunal from four to five years and raising the age of Judicial members from sixty-five years to sixty-seven years. Nevertheless, it has also been added that the Members would not be eligible for re-appointment. During examination, the Committee pondered over the views expressed by the nodal Ministry i.e., Ministry of Defence and the Ministry in-charge of drafting the bill i.e., Ministry of Law and Justice in addition to the Administrative Members of the Armed Forces Tribunal, the three Vice-Chiefs of the Services and several un-official witnesses. A close scrutiny of the evidence and material submitted before the Committee reveals that near unanimity exists on this amendment. The Committee are not inclined to accept the views expressed by two non-official witnesses who have stated that such a move to enhance the tenure of members would lead to complacency, thus find that the views of almost all the major stake holders are in favour of this proposed amendment. The**

**Committee are in no doubt that such a move as envisaged by the Ministry of Defence and concurred in by the representatives of the services and all other stake holders would bring stability and continuity in the functioning of the Armed Forces Tribunal. Once implemented, the larger benefits of it would definitely be passed on to the retired and serving Armed Forces Personnel. The Committee, therefore, in no uncertain words acquiesce with the proposed amendments in the two sub-clauses in Clause 2 of the Bill in totality.**

## CHAPTER III

### Proposed amendment to Section 19

3.1 Clause 3 of the Bill seeks to substitute new section for Section 19. It has been proposed to confer power of civil contempt to the Armed Forces Tribunal. However, the power for criminal contempt already exists in the Act. Section 19 of the Act states as under:

'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.'

3.2 The Ministry has proposed the following amendment in the Act, which states:

'Power to punish for contempt

The Tribunal shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts Act, 1971 shall have effect subject to the modifications that –

- (a) The references therein to a High Court shall be construed as including a reference to such Tribunal;
- (b) The references to the Advocate-General in section 15 of the said Act shall be construed in relation to the Armed Forces Tribunal, as a references to the Attorney-General or the Solicitor- General or the Additional Solicitor-General.'

3.3 The Committee wanted to know the precise difference between the criminal and the civil contempt. Throwing light on the query, the Ministry of Defence in a written note informed as under :

'As of now Section 19 of the Armed Forces Tribunal Act has given powers of criminal contempt to AFT. As per this provision, 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.

Civil contempt as defined in Section 2 (b) of the Contempt of Courts Act, 1971 means wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an undertaking given to a Court. Civil contempt would become applicable in AFT after proposed amendment in AFT Act. This will help AFT to charge a person who is disobeying AFT's order to implement AFT's order or to face punishment.'

3.4 A close scrutiny of the examination of this amendment would reveal in the succeeding paragraphs that the views of the Defence Services were dichotomous with that of the Ministry and also other stakeholders.

3.5 The Defence Secretary while briefing the Committee on this amendment of the Bill stated:

"The MoD after seeking legal advice from the Ministry of Law, consulting the DoPT and taking all the issues in consideration, decided to move this proposal that the AFT should be given power of civil contempt."

3.6 Intimating the views of the Services, the Defence Secretary said:

"It is pertinent to mention that the views of Services were also sought on the proposed amendment. The Services while not agreeing with the proposed amendment have opined that the AFT Act was passed after having considered all the aspects including the functioning of the Armed Forces and there is need to let the system stabilise and review the matter after a reasonable period. The Chief of Staff Committee was of the view that some more time may be given to settle down the issue may be revisited after five years and a decision may be taken based on the inputs from the three Services and the serving/retired personnel."

3.7 The Secretary, Ex-Servicemen Welfare during the oral evidence informed the Committee that conferment of the civil contempt might not be appropriate due to the reasons such as this type of contempt proceedings are initiated where there are private parties having problems with each other. While in this case AFT as well as the Ministry are working for Armed Forces Personnel.

3.8 Subsequently, through a post evidence reply the Secretary, Ex-Servicemen Welfare further clarified as under:

'The Department of ESW is not in favour of giving powers of civil contempt to AFT. Civil contempt should come up where there are private parties having problems with each other. Here, there is harmony and common objective between Department of Ex-servicemen Welfare and AFTs, both of whom work for the betterment of ex-servicemen. As it is, successive Governments have been fairly pro-active in looking after Armed Forces pensioners.'

3.9 Giving the reasons in this regard, it was intimated through a written note by Secretary, Ex-Servicemen Welfare that:

(a) By and large, the decisions of the Hon'ble AFTs are honoured by the Department of Ex-servicemen Welfare and implemented promptly unless they are against the settled policy of the Government.

(b) AFTs are working as Courts and delivering judgments on the issues. Either party to the case is free to implement, if possible or to go in for Appeal. These are not giving any awards. Therefore, there is no question for its settlement.'

3.10 Giving reflections on certain elements of conflict of interest which might crop up subsequent to the conferment of the civil contempt to the Tribunal, the Secretary, Ex-Servicemen Welfare during evidence said :

"In case if we are going to agree to Armed Forces Tribunal giving judgements which impinge on policies, let us assume that since situation arises, then the fundamental issue comes if I am an Administrative Member on a Tribunal, I myself is a retired personnel. I am a beneficiary of the entire pension pay out. Is it correct for me to be sitting and adjudicating on cases where I could possibly be

a beneficiary. This is a fundamental issue which I thought the Committee may like to examine."

3.11 Bringing out some issues in which the decisions were given by the Tribunal on the policy issues, it was intimated to the Committee through a written note by Secretary, Ex-Servicemen Welfare:

'It becomes difficult to implement orders passed by the Hon'ble Armed Forces Tribunal, if they are against the settled policy of the Government. The Hon'ble Tribunal may, therefore, avoid impinging on policy matters. In this context, it is very relevant to advert to the Judgment dated 12/7/2011 passed by the Armed Forces Tribunal Chennai in OA No. 22/2010, wherein the Tribunal has held as under:

"Once the Government Order or Policy was ground to infringe the provision of the Constitution or any other statutory provision, the Court is empowered to test the validity of the said Order/Policy under Article 226 of the Constitution." This position has been again clarified by the Hon'ble Apex Court in 2008(5) Supreme Court Cases 550 (State of Uttar Pradesh & Ors. Vs. Chaudhri Ranbeer Singh & Anr.) in the following terms: "The policy decision must be left to the Government as it alone can decide which policy should be adopted after considering all relevant aspects from different angles. In the matter of policy decision or exercise of discretion by the Government, so long as the infringement of fundamental right is not shown, courts will have no occasion to interfere and the Court will not and should not substitute its own Judgement for the Executive in such matters.'

3.12 On the implementation of the decision of the Armed Forces Tribunal, the Secretary, Ex-Servicemen Welfare informed the Committee that generally the orders passed by the AFTs are implemented unless they are against the settled policies of the Government. Giving example it was informed that the benefit of broadbanding is given to those invalided out individuals who get their service career cut short. The AFTs have been giving this benefit even to those who superannuate or discharged after expiry of their terms of engagement with disability. Such individuals are entitled to Disability Pension, if the same is affected by the service factors, but they are not granted benefit of broadbanding. A number of cases on this issue are pending for implementation, because in majority cases appeals have already been filed or are in the process of

being filed. It must also be emphasized that disregard of Government Policy by AFTs is not a general practice but limited to 1-2 Benches only.

3.13 When asked to give his views on this amendment, the Vice-Chief of Army Staff during evidence said:

"We are not in agreement with the second amendment. That is giving the powers of the civil contempt. The Chairman and Hon. Members will be aware that Armed Forces Tribunal has already got the powers of criminal contempt. By this amendment they want to now confer the powers of civil contempt, which is not in the interest of the service or in the overall interest of state due to the reasons that I will just mention.

Firstly, the proposed amendment seeks to confer powers of civil contempt to the Hon'ble Tribunal in addition to the existing powers of the criminal contempt. Section 19 of the AFT Act 2007 confers only the powers of criminal contempt. The Parliament in its wisdom and knowing fully well the implications of bestowing these powers, consciously decided not to arm Hon'ble Tribunal with such powers. There is a difference between the other Tribunal and AFT, that the working conditions of Armed Forces, which the Parliament had kept in mind when they conferred AFT with powers of criminal contempt. The working conditions, in case of an Army, if one is posted in a forward area or in a operational area, the communications are not as good as in peace areas. It takes considerate time before the matter is conveyed to the concerned persons who are supposed to appear in the Court or to bring them there. Similarly, the ship is at sea for months. He cannot be expected to unload from the ship and come for the contempt. Thus, the working conditions of Armed Forces being operationally committed are totally different than in the civil society. That is the reason probably for the Parliament not earlier giving the civil contempt powers to AFT. However, I may also add in the same breath that ours is a very disciplined force.

3.14 He further apprised the Committee:

"Everything moves with the orders. We are used to obeying the orders of our superior authority and the court. It is our bounden duty and it is ensured by regulations within the Army that Court orders are duly complied with. There is not wilful negligence or contempt of court. The proposed amendment will put a lot of handicaps in the functioning of the Forces in view of their deployment in the forward areas and operational areas, AFT Act was formulated in 2009 with a very conscious decision by the Parliament. We need to give time for it to stabilise and see what the problems are coming out of it. We have not visualised any problems having come and the Act of this nature and proposed powers of civil contempt should not be given to the AFT in a hurry."

3.15 When specifically asked, the problems, the Army would face, if civil contempt power is given, Vice-Chief of Army Staff further clarified as under :

"Our Benches for J&K are in Chandigarh and our deployment is in Leh and Valley and the areas get cut off for a very long time. There may be cases pertaining to the previous peace station, but now the individual is deployed in the field areas where even personal letters do not reach for days. In the glacier region which is filled with ice, even the aircraft do not go there for number of days. Thus we will have problems of implementation at the ground level. That is the problem we see from the operational angle."

3.16 He further stated :

"....Army is operationally deployed either in the North East or in J&K. Most of these, so to say, civil contempt cases are cases by name against the Senior Commanders and Commanding Officers, who are responsible for all the administration and discipline in units and formations. Can you imagine a unit carrying out counter-infiltration or counter-terrorist operations without the Commanders or Commanding Officer who is missing frequently for such summons from the court? All our operations are at the battalion level and in our case the CO is virtually there in all the operations. We will have serious operational problems and it will jeopardise our operational efficiency. That is what I can say as the Vice-Chief. I am telling from the experience because bulk of my forty years service, I have spent in the forward areas. Most of such cases are against the commanders because they are supposed to implement the directions. It is, therefore, not advisable, to bestow civil contempt powers to AFT."

3.17 Elucidating his view-point, the Ministry through a written reply communicated the views of the services as under:

'The proposal of amendment of AFT Act 2007 has been examined. After the AFT Act was enacted in 2007, the Armed Forces Tribunal started functioning w.e.f. Aug 2009. AFT Act was passed after having considered all the aspects including the functioning of the Armed Forces. There is a need to let the system stabilize and review the matter after a reasonable period.

In the present circumstances, the COSC is of the view that some more time may be given to the system to settle down and the issue may be re-visited after five years and a decision may then be taken based on the inputs from the three Services and the serving/retired personnel.'



3.18 During oral evidence on the amendments, the Vice-Chief of Naval Staff said :

".....Naval Headquarter views are not in agreement. The primary reason is that with regard to Sections 14, 15, 17, 18 and 20 of the Contempt of Courts Act, 1971, these are related to criminal contempt committed by a person. The amendment in Section 19 of the Act is primarily proposed to give powers of civil contempt, which were missing in the AFT Act. One of the reasons for not vesting the AFT with civil contempt powers was perhaps due to the fact that the AFT has been given powers of execution of their orders. Thus, it is apparent that it is not bestowing the AFT Act with powers of civil contempt which was a conscious move which was taken at that point in time. Hence the same was not incorporated under the AFT Act.

Another reason which requires consideration with regard to bestowing the power of contempt of the AFT, the possibility of AFT issuing contempt notices to the Commanding Officer, Commander in Chief and indeed to the Service Chief and also directing them to appear in person before the AFT cannot be ruled out. Such a direction would not be in the best interest of the Services and it may lower the morale of the Service personnel. It also needs to be mentioned that due to the disciplined nature of the Defence Forces, the Armed Forces personnel follow the orders and directions of the superiors including the AFT in letter and spirit. It is only in a few cases where the orders and directions of the AFT have not been complied with in a time-bound manner. This is due to the filing of appeal in the Apex court or due to the reason for awaiting the Ministry of Defence approval for implementation of the AFT directives. Under the circumstances, the contempt powers, if bestowed, could result in passing of directions to senior officials of the Armed Forces and the Ministry of Defence, senior officials also to appear before the AFT, which may not be desired. In any case, the AFT, as said by Lt. Gen. S.K. Singh, has been established recently. Therefore, a further view could be taken after a few years when the situation has stabilised. That is the view of the Naval Headquarters."

3.19 The views of the Vice-Chief of Air Staff were also on the similar lines. He stated before the Committee:

"On the second point on contempt of court, once again as has been stated by Vice-Chiefs of Army and Navy, criminal contempt powers are available to the Tribunal. In terms of civil powers for contempt, it was decided in 2009 for the reason that have been stated already, I would not repeat them, suffice it to say that the system should be allowed to settle down and reviewed after five years. Therefore, let the present system continue till 2014, and thereafter, take a decision."

3.20 The Committee thought it prudent to know about the stand of the one of the important stakeholders in this regard i.e. the Armed Forces Tribunal itself. Therefore, they decided to hear the views of the Administrative Member of the Principal Bench as well as one Administrative Member from a Bench (Chandigarh), where the maximum number of cases were pending for adjudication. When asked to put his arguments, the Administrative Member of the Principal Bench stated before the Committee as under :

" As regards the issue of civil contempt, as you are aware, we have the powers of criminal contempt but not of civil contempt. As of now we have a great number of cases which come up for execution. We call them execution petition and sometimes it takes the form of contempt application. As of now we have had 2172 cases for execution. These are cases, after having been disposed of by the tribunal have not been implemented by the respondent and therefore the applicant has come up once again as an execution petition. Execution petition is also dealt with by the tribunal. Firstly it is in fructuous work and secondly it is costly for the applicant and thirdly it amounts to further delays in execution for another couple of months. Most importantly, all tribunals and courts have got this power of civil contempt. As per the mandate of the Supreme Court they have said that all courts tribunals must have the power to ensure that their orders are executed. Besides this, what is important is that the orders of the tribunal which are based on the existing laws and rules. We do not go beyond that. We are not framing any rules for ourselves. So, it is well within the ambit of reasonableness. In a case, where someone has approached the Supreme Court for execution, the Solicitor General had assured the Supreme Court that an ordinance to that effect for granting powers of contempt will be issued shortly. That was about a couple of months ago. So, I suppose this is one of the fall outs of that petition and also what the Solicitor General had told the Supreme Court."

3.21 On a query in regard to any probable misuse of powers once civil contempt is conferred to the Tribunal, the Administrative Member from Chandigarh Bench stated as under :

"..... So, eventually if we ever have to use the powers of the civil contempt it would be in relation to the officers at the Service Headquarters and or in the Ministry of Defence. In most of the Service matters that is, matters concerning personnel, the execution lies with the Ministry of Defence, though they have delegated the powers to the Service Headquarters, yet the Service Headquarters do not have financial powers. Now, if a person has been granted the pension, final the approval has to be given by the Ministry of Defence. So, it is because of these reasons that the cases are pending. The power itself is rarely used because the tribunals have the ex-judges of the High Courts sitting there and the officers are reasonably senior, if at all it is ever used, it will be judiciously used. I

do not think that anybody should have fears that it will be abused by the Armed Forces Tribunal in any manner."

3.22 The Committee also decided to have the views of other stakeholders who reflect the views of the retired service personnel and et-al supporting the conferment of the civil contempt, a member of Indian Ex-Services League, Lt. Gen. V. Oberoi (Retd.) stated:

".....power to punish for contempt was long overdue and is totally acceptable to all of us."

3.23 The President of the Indian Ex-Services League, in agreement also rendered the same views by stating:

".....The court must have teeth to get these cases implemented any delay in this case possible is at our cost and peril....."

3.24 One non-official witness, Lt. Col. Satwant Singh (Retd.) was of the view that the AFT must be given civil contempt powers. He was of the opinion that in the absence of these powers AFT cannot get implemented its judgements. Such powers, if conferred, would be in conformity with the powers of High Court as the appellate jurisdiction after the appeal of AFT lies only with Supreme Court.

3.25 Another expert Major-Gen. Nilendra Kumar (Retd.) who has been the Judge Advocate-General was of slightly different views in this regard. He was of the opinion that if the power for civil contempt is conferred to the AFT, the representatives of the Government/other parties found guilty of such contempt should also be given adequate right for the defence and exceptions provided. It implies that procedure already indicated in Contempt of Courts Act, 1971 could be suitably followed so that rules of natural justice are adequately met.

3.26 A practicing lawyer in AFT, Principal Bench, Lt. Col. Rajiv Manglik (Retd.) also supported this proposed amendment during evidence by stating:

"...once the Tribunal has delivered the judgement, it is merely a paper in the hand of the person who has won the case and it is not possible for him to get it implemented by filing a contempt case within the timeframe when it is not implemented by the Union of India. So, giving this power is basically giving teeth to the AFT to deliver justice, and justice not only means delivery of the judgement but also justice means, it has to come to its logical conclusion, that is, he has to get the fruit of the judgement. That can only be possible once the Union of India implements on its own within the timeframe given. If they are not able to do it, then the person, who is culprit for not doing it, is hauled up in civil contempt....."

3.27 The Committee also obtained written memoranda from two non-official witnesses/experts in regard to the examination of the subject. Wing Commander U.C. Jha (Retd.) and Col. R. Balasubramanian (Retd.) Assistant Solicitor General of India were also of the view that conferment of civil contempt is necessary for execution of the decisions of the Tribunal by the concerned authorities.

3.28 The Committee thought it prudent to seek clarification from the Ministry on disagreement with the Forces in conferring the powers of civil contempt to the AFT. Clarifying the entire position as to how the proposal for such powers emanated, the Ministry in a written note intimated as under:

'The reasons conveyed by the Services to the Ministry for not agreeing with the proposed amendment of conferment of the powers of the civil contempt to the AFT were examined in this Ministry. In the case of WP (Civil) no. 15524/06 in the case of Shri Fayaz Khan versus UOI and others, who was dismissed from the army and therefore filed an Application before the Principal Bench for leave of appeal to the Supreme Court, against the non implementation of the favourable order obtained by him from AFT, while disposing his Application, AFT Principal Bench in its order dated 27.01.2011 observed that the Tribunal is handicapped because it does not have powers to issue a civil contempt to get the orders executed. Armed Forces Tribunal certified it to be a fit case to be taken to the Supreme Court for appropriate directions. Based on the above order of AFT, Civil Appeal No.2145/2011, titled Fayaz Khan vs. Union of India & Others was filed in the Hon'ble Supreme Court.

The then Learned Solicitor General of India and the Learned Additional Solicitor General of India, who appeared on behalf of the Govt in the above matter, advised the MoD to carry out a suitable amendment to Section 19 of the Armed Forces Tribunal Act to include the power of Civil Contempt expeditiously, by

issuing an Ordinance. Then, the matter was referred to the Ministry of Law who obtained the opinion of the Learned Attorney General of India. He advised that the Armed Forces Tribunal should be conferred powers of criminal and civil contempt.

The Armed Forces Tribunal, Principal Bench, also had proposed earlier to amend Section 19 of the AFT.

In view of the observation of the Hon'ble Supreme Court, views of the Learned Additional Solicitor General of India, views of the Learned Attorney General of India this Ministry agreed with the proposal of the Armed Forces Tribunal (Principal Bench) to amend Section 19 of the Armed Forces Tribunal Act, 2007.'

3.29 The Ministry also informed the Committee through a written reply that Ministry of Law and Justice also endorsed the advice of the learned Attorney-General who in his opinion dated 14.07.2011 opined as under:

"I have carefully considered the matter. I fail to see any reason for drawing a distinction between conferring powers of criminal contempt and not conferring the powers of punishing civil contempt. A Tribunal, which has power to issue binding orders, would be rendered effete if it does not have power to ensure that its orders are complied with. As a matter of constitutional law, the opinion of my learned predecessor is clear and I agree with it that there is no impediment. As a matter of policy, I see no reason why such power should not be conferred. On the contrary, it is clear that it should be so conferred."

3.30 On the beneficial effects of conferring civil contempt to the AFT, the Ministry of Law and Justice informed through a written note as under:

'The provision relating to "Power to punish for contempt" has been amended vide clause 3 of the Armed Forces Tribunal (Amendment) Bill, 2012. It is stated that Administrative Tribunal Act, 1985 (section 17), Special Court Act, 1992 (section 11A), the Competition Act, 2002 (section 53U), the National Tax Tribunal Act, 2007 contains only the criminal contempt and does not contain the powers of civil contempt, it has been proposed to amend section 19 of the said Act so as to include a civil contempt on lines similar to the said Acts. The provision was proposed to be amended as per the opinion given by the Learned Attorney General of India. This provision would enable the Tribunal to implement its orders.'

3.31 During oral evidence, Secretary, Ministry of Law and Justice again endorsed his views and stated :

".....The person is given an opportunity to explain why he has not implemented this order. It is only after give in an opportunity to show as to why he has not implemented it and if the Tribunal comes to the conclusion that there has been a deliberate disobedience of the order, only the contempt order will be passed. The power of criminal contempt is already there. Civil contempt is rather on the lower side. Civil imprisonment does not have the same consequences as criminal imprisonment. In civil contempt you can punish him only with a fine; whereas in criminal contempt the person will go to jail. So, I feel when the power of criminal contempt is already there which has not been objected to, then the objection which is coming for conferring power with regard to civil contempt, there is no reason for this".

3.32 During oral evidence, Secretary, Ministry of Law and Justice again endorsed his views and stated:

".....As far as the second amendment is concerned regarding civil contempt, I am in support of this amendment. It is needed. The Central Administrative Tribunal and other Administrative Tribunals created under the Administrative Tribunal Act already has this power."

3.33 He also clarified about the powers of AFT as under:

"This Tribunal is on par with the High Court and High Court has already the power to punish intentional disobedience of its orders. So, it is but natural that the Tribunal of this level and whose decisions are also declared to be final should have the power to punish for wilful disobedience of its orders. That is inherent in the judicial system which is needed."

3.34 After hearing the views of all the stakeholders and Ministries, including Ministry of Law and Justice, the Committee wanted to have explicit opinion of the Ministry of Defence as a summation to the proposed amendments in the Bill. On a specific query whether the Ministry of Defence had any objections, if the powers of civil contempt is given to the AFT, the Defence Secretary candidly stated as under:

"I have no objection because this is the proposal of the Ministry that the power should be given to it. This is our proposal. As to the compliance of the order,

AFT is an Hon. court and has the powers equivalent to the High Court. So, the Ministry is committed to comply with the orders as long as a considered decision in consultation with a legal advice is not taken in that view should go in for an appeal. Otherwise, we have to comply with this order and we comply with the orders also."

3.35 Clarifying further on the role of the AFT in the light of the powers of civil contempt, the Defence Secretary while deposing before the Committee said :

"The AFT is not meant only for the retired people and it is also for the serving people. So, you have cases regarding service matters, like promotion, etc. Secondly, it is not that everything comes up to the Ministry level. There are different levels of decisions also. Some decisions are taken at the field level, some at the Corp Commander level and some at the Service Headquarters. I think the AFT is a step in the right direction. The object is to provide them a speedy justice through the mechanism of the AFT. Earlier, this redressal was being sought through the normal course, high courts and others. This is something which we do not deny. The AFT has a utility. Thirdly, challenging the authority of any authority is a fundamental right of every individual, whether he is in service or retired. We have to provide a reasonable opportunity to him and an institution where he can go and file his grievance. Coming to the compliance of the order, as I said, it is our earnest effort that we must respect the order of the AFT. As I said, it is equivalent, in terms of status, to the high courts. Therefore, we do that always. But there may be cases where we have difference of interpretation.

The Government may not agree or we feel that there is a scope for appeal, in that case, we go to appeal in Supreme Court or file writ in High Court. It is an institution which has a utility and we support that and that is why we have come for this amendment."

3.36 A representative of Ministry of Defence in regard to the implementation aspect of the orders of AFT stated that it was the endeavour of the Ministry to implement the orders in letter and spirit except in the cases which were against the spirit of the policy of the Government or which were out of the mandate of the AFT.

**3.37 The Committee find that dichotomous views have been expressed by the major stake holders as far as the conferment of the Civil Contempt is concerned. Within the Ministry itself, the views of one Department i.e.**

**Department of Ex-Servicemen Welfare are at variance with that of the Ministry as a whole.**

**3.38 The Committee are not oblivious of the fact that the beneficiaries of the Armed Forces Tribunal Act are the retired or serving defence personnel. In this context, the views of the Vice-Chiefs of the services on the conferment of the powers of Civil Contempt on the Tribunal assume significance. A thorough examination reveals that the forces have opposed the conferment of the Civil Contempt mainly on the apprehension that it would impinge on operational requirements such as the absence of the summoned commanding officers jeopardising operational efficiency, difficulties in receiving summons in inaccessible terrains etc. The Committee are given to understand by the Services that AFT Act which is in nascent stage needs to be stabilised. The Defence Secretary has also shared the concerns of the forces with the Committee. The views of the three Vice-Chiefs as given before the Committee are on similar lines.**

**3.39 The Committee note that the Ministry of Defence, Ministry of Law and Justice and other stake holders including Administrative Members of the Armed Forces Tribunal etc. are in support of the conferment of powers of Civil Contempt mainly on the grounds of providing speedy justice to the aggrieved persons and obviating the longer and expensive processes of approaching higher courts.**

**3.40 After weighing all the pros and cons of the submissions made in regard to the conferment of powers of Civil Contempt to the Tribunal envisaged in**



the proposed bill, the Committee are compelled to tread cautious approach in this regard. While they are conscious about providing speedy justice to defence personnel (retired or serving), they do not want to disturb the highest standard of discipline prevalent among the forces. The Committee are of the view that if unfettered Civil Contempt powers are bestowed on AFTs, the discipline would be compromised to a great extent. This view of the Committee, is substantiated by the spate of recent judgements delivered by some of the AFTs with regard to issues concerning conflict of interest of Members of the Tribunal and impinging policy matters. Hence, the Committee are inclined to give Civil Contempt powers to AFTs with regard to the cases of retired defence personnel but conferment of such powers with regard to serving defence personnel is not acceptable till the justice delivery system through AFTs is stabilised. In other words, they want that no serving defence officer should be made to appear before the tribunal for Civil Contempt. The Ministry could revisit this arrangement after sometime if it considers that the system has become matured enough. The Committee want the Ministry to bring necessary changes in the Bill. Armed Forces however, should develop a strong grievance redressal system so as to ensure speedy justice to serving defence personnel.

- 3.41 To give teeth to the Tribunal, the Committee recommend that the Civil Contempt powers proposed to be given to the Tribunal shall be applicable

**on the Ministry of Defence and all other Civilian organisations as well as retired defence personnel.**

## CHAPTER IV

### Related issues

4.1 During the course of the evidence, the indulgence of the Committee was drawn to certain related issues which though were not the recommended amendments in the Bill. The Committee thought their duty to touch upon these issues, albeit briefly. The first such issue was shifting of the administrative control of the Armed Forces Tribunal to the Ministry of Law and Justice.

#### A. Administrative control of the Armed Forces Tribunal

4.2 The Administrative Member of the Chandigarh Bench of Tribunal in this regard threw some light during evidence by stating:

"....the reason is that the orders that we are passing at times go against the policy or interpretation of the policy which is laid down by the Ministry of Defence. Here the person executing the policies in the Ministry i.e. also exercising administrative control over the Armed Forces Tribunal in terms of funding. As such, Tribunals functioning is not under the purview of Ministry of Defence. The Tribunal is governed by the AFT Act, 2007. In case as in principle, all Tribunals are placed under Ministry of Law, it shall have its own advantages/disadvantages."

4.3 Citing upon the elements of subjectivity if the administrative control of the AFT continues with the Ministry of Defence, a representative of the Indian Ex-Services League, stated during evidence:

".....there is a certain amount of subjectivity because the AFTs come under the Ministry of Defence. All such tribunals must come under the Law Ministry. The Ministry of Defence has to be subjective because after all it is their cases which are being heard on which the AFT is commenting upon .Therefore, why should they be the supervisory – or the Ministry, whatever be the words – and therefore it should be the Law Ministry or any other Ministry. In fact, as far as my knowledge goes, there are a number of tribunals of all types and all of them function under the Law Ministry and not under their respective Ministries which have formed them."

4.4 One non-official witness Lt. Col. Satwant Singh (Retd.) in his memoranda submitted to the Committee brought out his views in support of his change by stating that:

'Presently the AFT's all over the country are under the administrative control of the Ministry of Defence and payment to the Judges and the staff is done from the Defence Budget. ....it would be in the interest of the litigants that the administrative control is shifted to under the Law Ministry so that the Judges can give judgment fearlessly/without getting biased or to worry about loss of hidden perks. This is a major step but would go a long way in provision of true justice to the aggrieved petitioners.'

4.5 On the Administrative Control of the Armed Forces Tribunal, Secretary, Ministry of Law and Justice informed the Committee as under:

"Sir, this was earlier recommended by the Supreme Court in L. Chandra Kumar case, and the present position / status is that the Department of Justice has already mooted a Central Tribunal Division. They have constituted an inter-Ministerial Group whose meetings are held regularly to come to uniform service conditions and terms for all the Chairperson and Members of all the Tribunals. They are submitting to the Supreme Court also".

4.6 Another representative of the Ministry of Law and Justice apprised the Committee:

"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".

4.7 On a query regarding uniformity of age of Judicial as well as Administrative Members, Secretary, Ministry of Law and Justice stated as under:

"This is one of the issues being considered by the Department of Justice because they are proposing the Central Tribunal Division and the Supreme Court is seized of the matter in the sense that they also want uniform terms and conditions of service of the chairpersons and Members of all the Tribunals."

## **B. Vacancies in the AFT / Raising the bar for selection of Judicial Member**

4.8 The Committee have learnt that large number of vacancies do exist in the Armed Forces Tribunal specially that of Judicial Members. The Committee have found that one vacancy of Administrative Member and six of Judicial Members exist in various Benches of the Tribunal which is hampering the speedy disposal of cases. An Administrative Member during the course of evidence had also stated that out of 15 Judicial Members, the Tribunal are functioning with only 8 Judicial Members which has already been brought out in the preceding paragraphs of this Chapter. In another context, the Committee were informed that proposal was in the offing for opening up of four new Benches of AFT at Srinagar, Patna, Hyderabad and Jabalpur. The Administrative Member of the Principal Bench also informed the Committee during evidence that there was a deficit of 07 Judicial Member and they were currently functioning at their 50% of their strength.

4.9 During the deliberations, the Committee took cognizance of the fact that the bar for becoming the Judicial Member should be raised on the lines of other Tribunals. A practicing lawyer qualified to be appointed as a High Court judge, a lawyer who practice for ten years for the Army Tribunal can be appointed as a Judicial Member.

4.10 One of the non-official expert Lt. Col. Rajiv Manglik (Retd.) was also briefed the Committee by rendering similar opinion:

" Firstly, as far as the present appointment of the judicial Member is concerned, a retired High Court judge or a Supreme Court judge is considered whereas in all the Tribunals, including the High Courts, the representation of Bar is permitted, that is, the advocates who have been practising for the last 10 years or more than 10 years. They are permitted to be risen to the High Court as well as to the other Tribunals, namely, the Central Administrative Tribunal, ITAT and CESAT. Everywhere the representation of Bar is permitted. But this is the only Tribunal or rather the only judicial forum in India as of now where the representation from the Bar is not there and the advocates, who are practising there, have got vast knowledge because they are daily presenting the cases of this nature only. But they have been debarred from being risen to the Bench. So, representation from the Bar should be proposed to be included in the appointment of judicial Member".

4.11 On this point, Secretary, Ministry of Law and Justice apprised the Committee as under:

".....Section 6(2) (b) of the Administrative Tribunal Act reads, "A person shall not be qualified for appointment as a Judicial Member unless he is qualified to be a judge of a High Court or he has for at least two years held the post of a Secretary to the Government of India in the Department of Legal Affairs or the Legislative Department or held a post of Additional Secretary to the Government in the said Department at least for a period of five years."

**C. Pendency of Cases**

4.12 The Ministry was asked to furnish the exact number of cases pending on date with the Principal Bench as well other Benches of the Tribunal and since when are they pending, it submitted that following information:

"The status of pending number of cases as on 30.11.2012 with the Principal Bench and the other Benches of the Tribunal, is as under:

<b>Bench</b>	<b>Numbers of cases Pending as on 30<sup>th</sup> November 2012</b>
AFT (PB) Delhi	385
AFT (RB) Lucknow	1088
AFT (RB) Chandigarh	1565
AFT (RB) Kochi	334
AFT (RB) Chennai	81
AFT (RB) Kolkata	259
AFT (RB) Jaipur	785
AFT (RB) Mumbai	94
AFT (RB)Guwahati	14
Total	4605

**4.13 The Armed Forces Tribunal Act, 2007 was enacted with a view to provide for quicker and less expensive justice to the members of the armed forces. The Committee however, find that as many as 4605 cases were pending before various benches of the Tribunal as on 30 November, 2012. Needless to say that such a large number of cases going to Armed Forces Tribunals reflects inadequacies in the grievance redressal system available in the Armed Forces. The Committee are of firm view that it is high time that Ministry of Defence took concerted steps to strengthen mechanism for redressal of grievances of members of the forces by stipulating that the higher/appellate authority in the three wings of the services should decide the representations of the aggrieved members by invariably issuing a speaking order in a time bound manner in each case. The Committee feel convinced that such a strengthened mechanism will go a long way in dispensations of quick and cheaper justice besides decreasing the burden of cases on the Armed Forces Tribunal.**

**4.14 The Committee find that some of the related issues which were brought to the notice of the Committee cannot be left untouched as they merit response. The Committee are aware that though these issues do not form directly the part of the bill which has been entrusted to the Committee for examination and report. The Committee feel that these issues if addressed in the right earnest by the Ministry would eventually strengthened the Armed Forces Tribunal Act and would complement the objective of imparting fair and prompt justice to the aggrieved defence personnel.**

**4.15** The first such issue that has surfaced is with regard to shifting of the administrative control of the Armed Forces Tribunal to the Ministry of Law and Justice. The Committee find that on the advice of the Supreme Court, the Department of Justice in the Ministry of Law and Justice proposed to set up Central Tribunal Division and after formation thereof all the tribunals will come under its control. They are also given to understand that for the present there are numerous tribunals which are under the control of Ministry of Law instead of their respective Ministries. The Committee are of the view that in order to build a strong and independent institution, this step will go a long way. Since the proposed division has not been formally formed so far, the Committee would like to watch the developments and desire that the Ministry may keep them informed.

**4.16** It is disconcerting for the Committee to note that out of fifteen Judicial Members, the Tribunals are functioning only with eight Judicial Members which is nearly fifty percent of its authorised strength. Hence, the Committee are dismayed to note that as many as seven vacancies of Judicial Members do exist in the AFT. The Committee would like the Ministry to intimate the reasons that as to why posts of such a high number of Judicial Members are lying vacant. Such vacancies not only hamper the work of the Tribunal but also affect its service delivery. The Committee has every reason to believe that after the passage of this bill, which will increase the age limit of the Judicial Members as well as tenure of all the Members, the Ministry would ensure that such vacancies do not



figure at all. The suggestions for raising the bar for the appointment of Judicial Members is also a constructive step in the right direction. It will not only ensure the full bench at all times but would also bring the AFT on the same pedestal like that of High Courts and, Administrative Tribunal etc. The Committee would like the Ministry to pay serious attention to this proposal. The process of selecting the Members for the Tribunal should also start in good time so that they must have a full tenure of five years and time is not wasted in selection process etc. The Committee are convinced that this will help in reducing the quantum of pending cases to a large extent.

New Delhi;  
15 March, 2013  
24 Phalguna, 1934 (Saka)

Raj Babbar  
Chairman  
Standing Committee on Defence

**LIST INDIVIDUALS/EXPERTS/ASSOCIATIONS WHO APPEARED OR SUBMITTED  
MEMORANDA BEFORE THE COMMITTEE**

- |                                     |   |                                  |
|-------------------------------------|---|----------------------------------|
| 1. Brig R. K. S. Gulia (Retd.)      | - | President IESL                   |
| 2. Col R.P. Sarin(Retd.)            | - | Member Delhi Chapter of IESL     |
| 3. Lt. Gen V Oberoi(Retd.)          |   |                                  |
| 4. Subedar JC Yadav(Retd.)          |   |                                  |
| 5. Naik Surinder Kumar (Retd.)      |   |                                  |
| 6. Maj. Gen.Nilendra Kumar(Retd.)   | - | JAG (Retd.)                      |
| 7. Lt. Col. Satwant Singh(Retd.)    |   |                                  |
| 8. Lt. Col. Rajiv Manglik(Retd.)    |   |                                  |
| 9. Col. R. Balasubramanian(Retd.)   | - | Asst. Solicitor General of India |
| 10. Wing. Cdr. Dr. U.C. Jha (Retd.) |   |                                  |

**The above experts submitted written Memoranda. However, Individuals/experts mentioned at SI.No. 1 to 8 tendered their views before the Committee.**

AS INTRODUCED IN THE RAJYA SABHA

3 AUG 2012

Bill No. XXXII of 2012

THE ARMED FORCES TRIBUNAL (AMENDMENT) BILL, 2012

A

BILL

to amend the Armed Forces Tribunal Act, 2007.

Be it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Armed Forces Tribunal (Amendment) Act, 2012.

Short title  
and  
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

55 of 2007. 5

2. For section 8 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as the principal Act), the following section shall be substituted, namely:—

Substitution of  
new section  
for section 8.

“8. The Chairperson or a Member of the Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office but they shall not be eligible for reappointment:

Term of office  
of Chairperson  
or Member.

10

Provided that no Chairperson shall hold the office after he has attained,—

(a) in case he has been a Judge of the Supreme Court, the age of seventy years; and

(b) in case he has been the Chief Justice of a High Court, the age of sixty-seven years:



Provided further that no Judicial Member shall hold the office as such Judicial Member after he has attained the age of sixty-seven years:

Provided also that no Administrative Member shall hold office as such Administrative Member after he has attained the age of sixty-five years.”

Substitution of new section for section 19. Power to punish for contempt.

3. For section 19 of the principal Act, the following section shall be substituted, namely:— 5

“19. The Tribunal shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts Act, 1971 shall have effect subject to the modifications that— 70 of 1971. 10

(a) the references therein to a High Court shall be construed as including a reference to such Tribunal;

(b) the references to the Advocate-General in section 15 of the said Act shall be construed in relation to the Armed Forces Tribunal, as a reference to the Attorney-General or the Solicitor-General or the Additional Solicitor-General. 15



## STATEMENT OF OBJECTS AND REASONS

The Armed Forces Tribunal Act was enacted in 2007 to provide for adjudication or trial by the 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 and also to provide for appeals arising out of orders, findings or sentences of court martial held under the said Acts and for matters connected therewith or incidental thereto.

2. The Armed Forces Tribunal Act, 2007 came into force with effect from the 15th June, 2008 with a view to provide for quicker and less expensive justice to the members of the three services (Army, Navy and Air Force). The Principal Bench of the Armed Forces Tribunal has started functioning in Delhi from the 10th August, 2009. Regional Benches of the said Tribunal at eight places, namely, Jaipur, Chandigarh, Lucknow, Guwahati, Kolkata, Chennai, Kochi and Mumbai, have also started functioning subsequently.

3. Under the existing provisions contained in section 8 of the Armed Forces Tribunal Act, the Chairperson or a Member of a Tribunal shall hold office for a period of four years from the date on which he enters upon his office and shall be eligible for reappointment. However, no Chairperson shall hold office as such after he has attained— (a) in case he has been a Judge of the Supreme Court, the age of seventy years; and (b) in case he has been the Chief Justice of a High Court, the age of sixty-five years. It further provides that the Members, both Judicial and Administrative, shall hold office until they attained the age of sixty-five years. The Judicial Members are not completing their term of office and thus vacancies are arising frequently on regular basis in the Tribunal.

4. It is, therefore, proposed to change the term of office of the Chairperson and Members from four years to five years from the date on which they enter upon their office and shall not be eligible for reappointment. It is further proposed to enhance the age limit of the Chairperson, in case he has been the Chief Justice of a High Court, from sixty-five years to sixty-seven years. In order to avoid repeated selection of Members for short tenures so as to provide the Tribunal with stability and continuity, it is also proposed to enhance the age limit of Judicial Member from sixty-five years to sixty-seven years.

5. Section 19 of the Armed Forces Tribunal Act enables the Tribunal to punish for criminal contempt only and not for civil contempt. The aforesaid Act in its present form does not contain any provision for the execution of the orders finally passed by the Tribunal. As a result of which cases involving serious questions of law of public importance are to be taken to the Supreme Court for appropriate directions. It is, therefore, proposed to confer powers of civil contempt to the said Tribunal in addition to the existing powers of criminal contempt. The proposed amendment would give the same jurisdiction, powers and authority to the said Tribunal in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts Act, 1971, shall have effect subject to certain modifications mentioned in the Bill.

6. The Bill seeks to achieve the above objects.

NEW DELHI;  
The 25th June, 2012.

A.K.ANTONY.





ANNEXURE

EXTRACTS FROM THE ARMED FORCES TRIBUNAL ACT, 2007

(55 OF 2007)

Term of  
office.

\* \* \* \* \*  
8. The Chairperson or a Member shall hold office for a term of four years from the date on which he enters upon his office and shall be eligible for re-appointment:

Provided that no Chairperson shall hold office as such after he has attained,—

(a) in case he has been a Judge of the Supreme Court, the age of seventy years; and

(b) in case he has been the Chief Justice of a High Court, the age of sixty-five years:

Provided further that no other Member shall hold office as such Member after he has attained the age of sixty-five years.

Power  
punish  
contempt.

\* \* \* \* \*  
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 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.

\* \* \* \* \*



RAJYA SABHA

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A  
BILL

to amend the Armed Forces Tribunal Act, 2007.

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*(Shri A.K. Antony, Minister of Defence)*