

**A.F.R.**  
**Court No.1**  
**Reserved Order**

ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW

**Original Application No.230 of 2014**

Friday this the 14<sup>th</sup> day of November, 2014

**Hon'ble Mr. Justice S.C. Chaurasia, Member (J)**  
**Hon'ble Air Marshal Anil Chopra, Member (A)**

No. 6944474-H Havildar Narendra Singh  
Chahar, S/o Shri Bijendra Singh,  
5 FOD C/o 99 APO, PIN No.909905,  
Presently attached with Station Headquarters,  
Agra Cantt. (U.P.)

..... Applicant

By Legal Practitioner Shri R. Chandra, Advocate

Versus

1. Union of India, through the Secretary,  
Ministry of Defence, Government of India,  
New Delhi
2. Chief of the Army Staff,  
Integrated Headquarters of Ministry  
of Defence (Army) DHQ,  
Post Office New Delhi
3. The Officer In-Charge Ordnance Records,  
Secunderabad
4. Directorate General of Ordnance Services,  
Master General of Ordnance Branch,  
Integrated HQ of MoD (Army)  
New Delhi-110105
5. The General Officer Commanding  
HQ Eastern Command,  
Calcutta (West Bengal)

6. Commandant,  
5 FOD C/O 99 APO,  
PIN No.909905

7. Station Head Quarters, Agra Cantt. (U.P.)  
..... Respondents

By Legal Practitioner Shri Ishraq Farooqui, Standing  
Counsel for the Central Government,

### **ORDER**

#### **“Hon’ble Mr. Justice S.C. Chaurasia, Member (J)”**

1. Heard Shri R. Chandra, learned counsel for the applicant, Shri Ishraq Farooqui, learned counsel for the respondents and perused the record.

2. The instant Original Application has been moved on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, and he has claimed the reliefs as under:-

*“(I). The Hon’ble Tribunal may be pleased to quash the impugned order dated 14.10.2014 (Annexure No.A-1) issued by respondent No 5 and 6.*

*(II) The Hon’ble Tribunal may be pleased to direct the respondents to continue attachment with Station Headquarters Agra Cantt or anywhere near the Court so that applicant can paravi of his court cases.*

*(iii) Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.”*

3. Learned counsel for the respondents has raised a preliminary objection to the maintainability of the instant Original application, on the ground that the matter in dispute does not come within the purview of “service matters” as defined in Section 3 (o) of the Armed Forces Tribunal Act, 2007 and hence, the instant Original Application is liable to be dismissed on this very ground at the admission stage itself.

4. Contra to the above submission, learned counsel for the applicant has submitted that the present controversy comes within the purview of “service matters” as defined in Section 3 (o) of the Armed Forces Tribunal Act, 2007 and the instant Original Application is maintainable; that the applicant was deputed on temporary duty to Station Head Quarters Agra Cantt. with effect from 22.09.2014 to 22.11.2014 for attending the court cases and the said order of temporary duty has been cancelled by the respondent No.5 arbitrarily, without providing opportunity of hearing to the applicant in violation of the principles of natural justice and hence, the said order deserves to be quashed; that the period of temporary duty cannot be converted into leave later on; that the applicant has been released on bail in a criminal case vide order dated 25.04.2008 passed by

the Chief Judicial Magistrate, Bharatpur (Rajasthan) and he may have been attached to a unit nearest to the said court in order to attend the court case in view of para 420 of the Defence Services Regulations (Regulations for the Army) Revised Edition, 1987 (Vol. I); that four army personnel are also attached with the Station Headquarters, Agra Cantt in the same situation to attend the court cases.

5. The relevant part of “service matters” as defined in Section 3 (o) of the Armed Forces Tribunal Act, 2007 may be reproduced as under :-

“3. Definitions.- In this Act, unless the context otherwise requires,-

(o) “service matters”, in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), mean all matters relating to the conditions of their service and shall include –

.....

But shall not include matters relating to –

(i).....

(ii) transfers and postings including the change of place or unit on posting whether individually or as a part of unit , formation or ship in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950),

(iii) leave of any kind;

(iv) .....”

6. Para 420 of the Defence Services Regulations (Regulations for the Army) Revised Edition, 1987 (Vol. I) is reproduced as under:

*“420. Duties while Released on Bail.- (a) A JCO, WO, OR or an enrolled non-combatant, released on bail and awaiting trial by the civil power will, during the period he remains on bail perform all military duties without prejudice to his trial by the civil power when required to surrender for the same.*

*(b) In order to facilitate resumption of duties, he will be attached to a unit/formation nearest to the place where the court is situated. As soon as the CO of the arrested person receives information about the arrest by the civil police in accordance with para 397, the person will be instructed telegraphically that, if and when he is released on bail by the court, he will report for duty to the nearest formation/unit immediately so that he may be able to perform duty. The formation/unit to which the person reports on release on bail will intimate the date of his arrival to his parent formation/unit who in turn will issue necessary orders relating to his attachment.”*

7. From the perusal of record, it transpires that the applicant's eight (08) cases relating to domestic matters are pending in different courts, in which the dates have been fixed from 03.11.2014 to 15.01.2015, as is evident from Annexure A-2. The letter dated 31.07.2014, issued on behalf of the Dte General of Ordnance Services, (Annexure A-5) indicates that the applicant was transferred from Agra after

completion of the term of normal posting. During enquiry, it also revealed that the case is pending in the court for the last about 07 years and it is not clear as to when it will be disposed of. The bail order dated 25.04.2008, passed on the bail application of the applicant under Sections 498A and 406 I.P.C., P.S. Kotwali Bharatpur, (Annexure A-3), indicates that he was enlarged on bail in the said case by the Chief Judicial Magistrate, Bharatpur.

8. The movement order dated 22.09.2014 (Annexure A-6) indicates that the applicant was deputed on temporary duty to Station Headquarters, Agra Cantt from 22.09.2014 to 22.11.2014 for attending the court hearing at civil courts, Agra and Bharatpur, with the direction that after completion of the said duty, he will report back to the concerned unit. The applicant's attachment for court hearing was not approved by the East Com (ORD) and it was requested that the applicant be informed that his attachment period from 23<sup>rd</sup> September to 23<sup>rd</sup> November is being regularised as leave/extension of leave and he was advised to report back to the unit accordingly vide Annexure A-1. This order has been challenged by the applicant on the grounds as mentioned above.

9. From perusal of the definition of “service matters” as mentioned above, it is clear that it does not include the matters relating to transfers and postings including the change of place or unit on posting whether individually or as a part of unit, formation or ship. The applicant was deputed to Station Headquarters Agra Cantt for a temporary duty for the said period, but it was not approved by the respondent No.5 and the applicant was directed to report back to the concerned unit and it was also directed that the period of temporary duty is being regularized as leave/extension of leave. The order deputing the applicant on temporary duty for the said period and its cancellation later on, definitely involves the change of place and it is included in the postings. Such change of place, definitely, does not come within the purview of “service matters” as defined in Section 3 (o) of the said Act and the matter relating to leave of any kind is also not included in the “service matters”. We do not agree with the contention of the learned counsel for the applicant that the present controversy comes within the purview of “service matters” as defined in Section 3 (o) of the Armed Forces Tribunal Act, 2007.

10. A person aggrieved by an order pertaining to any service matter may make an application to the Tribunal in accordance with Section 14 (2) of the Armed Forces Tribunal Act, 2007. Thus, it is clear that the application under Section 14 (2) of the said Act can be moved only by a person, who is aggrieved by an order pertaining to any service matter. In the instant case, the applicant is not aggrieved by an order pertaining to any service matter as defined in Section 3 (o) of the said Act and hence, the instant Original Application is not maintainable.

11. Since the instant Original Application is not maintainable under Section 14 (2) of the Armed Forces Tribunal Act, 2007 and this Tribunal lacks jurisdiction to adjudicate the present controversy, there is no scope for considering the merits of the order, deputing the applicant on temporary duty and cancellation of the said order, later on.

12. In view of the aforesaid discussion, we are of the view that this Tribunal lacks jurisdiction to adjudicate the controversy involved in the instant Original Application and it is also not maintainable. Consequently, the Original Application No.230 of 2014, Hav. Narendra Singh Chahar



Vs. Union of India and others, is dismissed at the stage of admission itself. Parties shall bear their own costs.

(Air Marshal Anil Chopra)  
Member (A)

(Justice S.C. Chaurasia)  
Member (J)

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