

A.F.R

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Court No. 2

Original Application No. 328 of 2013

Monday, the 16th day of December, 2013

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

Sumesh Kumar S/o Sri Subhash Singh R/O – H.No. 117,
Sundar Puri, P.O. – Rampuri, P.S./Tehsil – Sadar, District –
Ghaziabad (U.P.).

Applicant

By Legal Practitioner Shri Kamlesh Kumar Shukla, Advocate.

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Commandant, Military Hospital, Meerut.
3. Commanding Officer, Army Recruiting Officer, Meerut.

Respondents

By Legal Practitioner Mrs. Deepti Prasad Bajpai, Advocate,
Senior Central Government Counsel.

ORDER

“Hon’ble Mr. Justice S.C. Chaurasia”

1. Heard Shri Kamlesh Kumar Shukla, Learned Counsel for the applicant, Mrs. Deepti Prasad Bajpai, Learned Counsel for the respondents and perused the record.

2. Learned Counsel for the respondents has raised a preliminary objection and has submitted that the applicant is not subject to the provisions of the Army Act, 1950, and hence, the instant Original Application is not maintainable in this Tribunal and it is liable to be dismissed on this very ground.

3. Contra to above submission, learned Counsel for the applicant has submitted that the applicant filed the Writ - A No.64424 of 2013, Sumesh Kumar Versus Union of India and Others, in the Hon'ble High Court, Allahabad and the said Writ Petition was dismissed on the ground of alternative remedy in the Armed Forces Tribunal, vide order dated 26.11.2013; that the applicant has filed the instant Original Application in compliance with the order of the Hon'ble High Court.

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

“(i) To issue an appropriate order or direction and the Hon'ble Tribunal may kindly be pleased to order the Respondents to recruit and dispatch the applicant for training with immediate effect as CLK/SKT as he was selected and is medically fit and if need be the applicant may be medically examined by an independent medical board consisting of medical specialists from Army as well as from government hospitals.

- (ii) *To grant him age relaxation as he has been rendered overage due to negligence of the respondents.*
- (iii) *Any other relief as considered proper by this Hon'ble Tribunal may please be granted in favour of the applicant.*
- (iv) *The Cost of the application may also be directed to be awarded.”*

5. Section 2 of the Armed Forces Tribunal Act, 2007, enumerates the persons, to whom the provisions of the said Act are applicable. It may be reproduced as follows :-

“2. Applicability of the Act.- (1) The provisions of this Act shall apply to all 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).

(2) This Act shall also apply to retired personnel subject to the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950), including their dependants, heirs and successors, in so far as it relates to their service matters”.

6. Section 14 of the Armed Forces Tribunal Act, 2007, so far as it is relevant for the instant case, is reproduced as under :-

“14. Jurisdiction, powers and authority in service matters .- (1) Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, 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 article 226 and 227 of the Constitution) in relation to all service matters.

(2) Subject to the other provisions of this Act, a person aggrieved by an order pertaining to any service matter may make an application to the Tribunal in such form and accompanied by such documents or other evidence and on payment of such fee as may be prescribed.

(3) On receipt of an application relating to service matters, the Tribunal shall, if satisfied after due inquiry, as it may deem necessary, that it is fit for adjudication by it, admit such application; but where the Tribunal is not so satisfied, it may dismiss the application after recording its reasons in writing.

(4).....

(5) The Tribunal shall decide both questions of law and facts that may be raised before it.”

7. The “service matters” as defined in Section 3(o) of the Armed Forces Tribunal Act, 2007, so far as it is relevant for the instant case, is reproduced as under :-

“3(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

(i) remuneration (including allowance), pension and other retirement benefits;

(ii) tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions;

(iii) summary disposal and trials where the punishment of dismissal is awarded;

(iv) Any other matter, whatsoever,

but shall not include matters relating to -”

8. Section 2 of the Army Act, 1950, indicates about the persons who are subject to the said Act. The Section 2 of the Army Act, 1950 provides as under :-

*“2. **Persons subject to this Act.** – (1) The following persons shall be subject to this Act wherever they may be, namely:-*

(a) officers, junior commissioned officers and warrant officers of the regular Army;

(b) persons enrolled under this Act;

(c) persons belonging to the Indian Reserve Forces;

(d) persons belonging to the Indian Supplementary Reserve Forces when called out for service or when carrying out the annual test;

(e) officers of the Territorial Army, when doing duty as such officers, and enrolled persons of the said Army when called out or embodied or attached to any regular forces, subject to such adaptations and modifications as may be made in the application of this Act to such persons under sub-section (1) of section 9 of the Territorial Army Act, 1948 (56 of 1948);

(f) persons holding commissions in the Army in India Reserve of Officers, when ordered on any duty or service for which they are liable as members of such reserve forces;

(g) officers appointed to the Indian Regular Reserve of Officers, when ordered on any duty or service for which they are liable as members of such reserve forces;

(h) Clause (h) omitted

(i) persons not otherwise subject to military law who, on active service, in camp, on the march or at any frontier post specified by the Central Government by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, the regular Army.

(2) Every person subject to this Act under clauses (a) to (g) of sub-section (1) shall remain so subject until duly retired, discharged, released, removed, dismissed or cashiered from the service.”

9. A person aggrieved by an order pertaining to any service matter, may make an application to the Tribunal in view of Section 14(2) of the Armed Forces Tribunal Act, 2007. It clearly shows that the Original Application cannot be moved in the Armed Forces Tribunal, unless, the concerned person is aggrieved by an order pertaining to any service matter. The service matter has been defined in Section 3 (o) of the said Act. The bare perusal of the definition of “service matters” indicates that the concerned person must be subject to the Army Act, 1950, the Navy Act, 1957 or the Air Force Act, 1950, as the case may be. Section 2 of the Army Act, 1950, as referred to above, provides about the persons, who are subject to the

provisions of the Army Act, 1950. It is not disputed by learned Counsel for the applicant that the applicant has not been enrolled as yet under the provisions of the Army Act, 1950. Learned Counsel for the applicant has not been able to show us that the case of the applicant comes within the purview of any of the clauses of Section 2(1) of the Army Act, 1950. Thus, it is clear that the applicant is not subject to the provisions of the Army Act, 1950.

10. Since the applicant is not subject to the provisions of the Army Act, 1950, he is not entitled to file the Original Application under Section 14 of The Armed Forces Tribunal Act, 2007, in the Armed Forces Tribunal, because, he is not aggrieved by an order pertaining to any service matter. The service matters, as defined above, clearly indicates that it is a condition precedent that the concerned person must be subject to the Army Act, 1950, the Navy Act, 1957 or the Air Force Act, 1950, as the case may be. If the aggrieved person is not subject to the provisions of any of the said Acts, he can not be said to be aggrieved by an order pertaining to any service matter.

11. During arguments, Learned Counsel for the applicant has conceded that this Tribunal has no jurisdiction to adjudicate the controversy involved in the instant Original Application, but, has submitted that the applicant has filed the instant Original Application in compliance with the order of the Hon'ble High

Court. The Hon'ble High Court has dismissed the applicant's Writ Petition on the ground of alternative remedy. Thereafter, the applicant has filed the instant Original Application and has claimed the reliefs as mentioned above.

12. Since the preliminary objection has been raised on behalf of the respondents, with regard to jurisdiction of this Tribunal to adjudicate the controversy involved, we have no option but to consider various provisions of relevant law to determine as to whether this Tribunal has jurisdiction to adjudicate the present controversy. Accordingly, we have considered the relevant provisions of law, as discussed above, and agree with the contention of the Learned Counsel for the respondents. It is true that the applicant has approached this Tribunal for redressal of his grievance by way of alternative remedy in the light of the order passed by the Hon'ble High Court, but, when any Original Application is filed by way of alternative remedy, it has to be disposed of in accordance with law. Since this Tribunal lacks jurisdiction to adjudicate the present controversy, with great respect, we find ourselves unable to admit the Original Application for hearing.

13. In view of the aforesaid discussion, we are of the considered view that the applicant is not subject to the provisions of the Army Act, 1950, and hence, the instant Original Application for adjudication of controversy involved in

the present matter, is not maintainable and it cannot be admitted for hearing, and it deserves to be dismissed at the admission stage itself.

14. The instant Original Application No. 328 of 2013, Sumesh Kumar Versus Union of India and Others, is dismissed, accordingly.

(Air Marshal Anill Chopra)
Member (A)

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

Dwivedi