

Form No. 4  
{See rule 11(1)}  
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW  
Court No. 1(SI. No. 26)

O.A. No.977 of 2023 with M.A. No. 1303 of 2023

**Ex.Cadet Shivam Gupta** Applicant  
By Legal Practitioner for the Applicant : Shri Ravi Kumar Yadav, Advocate  
Col. H.M. Maheshwari (Retd.), Advocate

**Versus**

**Union of India & Others** Respondents  
By Legal Practitioner for Respondents : Shri Ashish Kumar Singh, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><b><u>25.01.2024</u></b> <b><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></b> <b><u>Hon'ble Lt. Gen. Anil Puri, Member (A)</u></b></p> <p>1. On the case being taken up for hearing Shri Ravi Kumar Yadav, Ld. Counsel for the applicant and Shri Ashish Kumar Singh, Ld. Counsel for the respondents are present.</p> <p>2. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 against non-grant of benefit of rounding off of disability award.</p> <p>3. The applicant has prayed for the following reliefs :-</p> <p>A. <i>To issue /pass an order or directions of appropriate nature to the respondents to grant disability award from 20% to 50% after applying rounding off principle to the applicant from the next date from which he was withdrawn from training /service (11.03.2004) and to pay the arrears along with suitable rate of interest as deem fit by this Hon'ble Tribunal.</i></p> <p>B. <i>Any other relief as considered proper by the Hon'ble Tribunal awarded in favour of the applicants.</i></p> <p>4. Preliminary objections have been raised on maintainability of this Original Application on the ground that applicant does not come under the purview of Army Act and hence, case is not maintainable before the Armed Forces Tribunal.</p> <p>5. This O.A is listed today for hearing on the point of maintainability and admissibility of the instant case.</p> <p>6. Ld. counsel for the applicant submits that the Applicant joined National Defence Academy (NDA) at Khadakwasla, Pune as Army Cadet on 24.06.2002. While participating in organized game at NDA he sustained injury on his left leg resulting in disability "Partial ACL Tear (LT) Knee". The disability was found Attributable to Military Service and assessment was done @ 20%</p>

for life by the IMB held at MH Kirkee. Due to this disability, applicant was withdrawn from training and was granted Ex-gratia award and Disability award in the year 2003. Upon recommendation of the 7<sup>th</sup> Pay Commission, Ex-gratia award and Disability award were revised on 31.10.2016 but the applicant was not granted the benefit of rounding off of disability award from 20% to 50%. Applicant has preferred representation dated 21.12.2019 in this regard but his representation has not yet been decided by the respondents. It is in this perspective that the applicant has preferred the present Original Application.

7. Heard the Id. counsel for the parties on maintainability and admissibility of the case and perused the records.

8. The Armed Forces Tribunal Act 2007 is explicit on the Applicability as defined in Section 2 of the Act which reads as under:

*“(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 4 4 Air Force Act, 1950 (45 of 1950), including their dependants, heirs and successors, in so far as it relates to their service matters”*

9. The definition of service matters has also been clearly defined in Section 3(o) of the Armed Forces Tribunal Act, 2007 as under:

*“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 allowances), 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—*

- (i) orders issued under section 18 of the Army Act, 1950 (46 of 1950), sub-section (1) of section 15 of the Navy Act, 1957 (62 of 1957) and section 18 of the Air Force Act, 1950 (45 of 1950); and*
- (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) Summary Court Martial except where the punishment is of dismissal or imprisonment for more than three months;”*

10. The issue of service matters and jurisdiction of the AFT has been very clearly defined by a Division Bench of the Allahabad High Court in the case of Union of India and Others Vs Kapil Kumar (Special Appeal No.833 of 2015 (MANU/UP/2042/2015) wherein it has been held that the basic requirement of being a service matter is that it must arise in relation to persons who are subject to the Army Act 1950, the Air Force Act 1950 or the Navy Act 1957.

11. The issues pertaining to training of an Officer Cadet prior to a person being Commissioned in the Armed Forces do not come under the jurisdiction of the AFT as he does not come under the purview of the Army till date of Commissioning as a Commissioned Officer in the Indian Army.

12. This issue has further been explicitly clarified by a three Member Bench of the AFT Principal Bench order in the case of Kaptan Singh Vs Union of India &Ors and 17 other Applicants (OA 17/2015 -RB, Jaipur) vide Order dated 28 May 2021. The relevant portion of the order is reproduced herein under-

*“Accordingly, we answer the reference by holding that as the applicants are not subject to the Army Act, 1950, the Navy Act, 1957 or the Air Force Act, 1950, as the case may be, this Tribunal has no jurisdiction to deal with the matter and the dispute canvassed by them in the applications filed under Section 14 of the AFT Act does not fall within the ambit of „service matters“ defined in Section 3(o) of the Act. The reference is answered accordingly.”*

13. In view of above quoted Section 2 and Section 3(o) of the AFT Act 2007 and Allahabad High Court Judgement referred in Para 10 and AFT Principal Bench Order referred in Para 12 above, we are of the view that the issue being sought to be adjudicated does not come under the purview of the AFT. Hence, O.A is not maintainable before this Tribunal. The Applicant is at liberty to approach appropriate forum to ventilate his grievances with regard to the impugned action.

14. The OA is rejected being not maintainable before the Armed Forces Tribunal.

**(Lt. Gen. Anil Puri) (Justice Anil Kumar)**  
**Member (A) Member (J)**

RK/-