

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Dy No. 2105 of 2018****In Re:****OA No. nil of 2018**Friday, this the 10<sup>th</sup> day of August, 2018**Hon'ble Mr. Justice SVS Rathore, Member (J)****Hon'ble Air Marshal BBP Sinha, Member (A)**

Sanjeev Kumar, son of Shri Adesh Chauhan, resident of village Sisaiya, Thana and Post Office Faridpur, District Bareilly.

.... Applicant

Ld. Counsel for the Applicant : **Shri Nitin Kumar Mishra, Advocate**

Vs.

1. Directorate General of recruiting Army Recruitment Office, Bareilly.
2. Recruiting Medical Officer, Army Head Quarter Fort Road, Bareilly, through its Major Rtg. MO ARO, Bareilly.

... Respondents

Ld. Counsel for the Respondents: **Ms Amrita Chakraborty, Advocate****ORDER (Oral)**

1. By means of this OA under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has made the following prayers:

*“(i) To quash the medical certificate dated 16.12.2017 by means of which the applicant was declared unfit. (Annexure No. 1)*

*(ii) To direct the opposite parties to initiate the review medical examination of applicant in order to examine his eye sight.*

*(iii) To direct the opposite parties to admit the applicant for Army training for which he is eligible.*

*(iv) Any other order or direction which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case may also be passed.*

*(v) To allow this original application with costs."*

2. Heard learned counsel for the parties on the point of admission.
3. On behalf of the respondents, a preliminary objection has been raised regarding the maintainability of this OA in this Tribunal. It is submitted that the applicant was not medically fit hence he was not enrolled in the Army.
4. In brief, the facts of the case are that the applicant applied for his recruitment in Army in view of an advertisement on the website of the Army. He passed the physical test on 06.04.2017 and was selected in the preliminary medical test. Thereafter he appeared in written test and was selected for training. However, the applicant was declared medically unfit by the Army Medical Board subsequently before joining training...
5. Submission of learned counsel for the applicant is that since the applicant was selected for training after passing the initial physical and medical tests as required, but thereafter he was illegally declared medically unfit for enrolment by the Army Medical Board conducted again before his training actually started; therefore, this OA is maintainable in this Tribunal.
6. On the contrary, learned counsel for the respondents submits that the applicant did not meet the required medical standard, hence he was found unfit for enrolment in the Army, and since he was not subject to Army Act at any stage of the process of selection, this OA is not maintainable in this Tribunal.

7. At this juncture, we would like to quote Sections 2 and 3(o) of the Armed Forces Tribunal Act, 2007, which read as under:

**“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.”*

**“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 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,*

*.....”*

8. A Division Bench of Hon’ble Allahabad High Court in *Special Appeal No. 833 of 2015, Union of India thru’ Secy and 2 others versus Kapil Kumar*, decided on 24.11.2015, has considered this point and has decided as under:

*“In the present case, we find that the learned Single Judge has simply ordered that the proceedings be*

*transferred under Section 34 without considering as to whether the matter was within the jurisdiction of the Tribunal under Section 14. The relief which the respondent seeks is to provide him entry into the service of the Army. There is not even an averment to the effect that the respondent was enrolled as a member of the Armed Force. On the contrary, the respondent has sought to question the decision by which he was declared unfit for enrolment on the ground that he did not meet the required medical standard. Such a dispute which arose prior to the enrolment of the respondent into the Armed Forces would not fall within the definition of the expression "service matters" under Section 3(o) because ex facie, the respondent is not a person who is subject to the Army Act, 1950."*

9. In the facts of the afore-mentioned case also, the respondent did not meet the required medical standard; therefore, he was declared medically unfit for enrolment in the Army. The facts of the said case are identical to the facts of the instant case.

10. Therefore, in view of the decision of the Hon'ble Allahabad High Court in the case of **Kapil Kumar** (supra) and the provisions of Sections 2 and 3(o) of the Armed Forces Tribunal Act, 2007, we are of the considered view that this OA is not maintainable in this Tribunal.

11. Accordingly, this OA is **dismissed as not maintainable**.

However, the applicant is at liberty to seek remedy of his grievances before appropriate forum.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice SVS Rathore)**  
**Member (J)**

August 10, 2018  
LN/-