

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****M.A.No. 1451 of 2018****In Re:****OA No. nil of 2018**Tuesday, this the 14<sup>th</sup> day of August, 2018**Hon'ble Mr. Justice SVS Rathore, Member (J)****Hon'ble Air Marshal BBP Sinha, Member (A)**

Dipendra Singh, son of late Hatam Singh, resident of village Sirsa Thath, P.O. Kanth, District Moradabad, Uttar Pradesh.

.... Applicant

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

Vs.

1. Union of India through its Secretary, Ministry of Defence, D.H.Q. New Delhi.
2. Directorate of Manpower Recruitment, IHQ MoD (N) New Delhi-110011 through the Director.

...Respondents

Ld. Counsel for the Respondents: **Shri Amit Jaiswal,  
Advocate****ORDER (Oral)**

1. Heard learned counsel for the parties on the point of admission.
2. By means of this OA under Sections 14 and 15 of the Armed Forces Tribunal Act, 2007, the applicant has made the following prayers:

*“(1) to direct the respondents to give a chance in recruitment and necessary examination be made.*

*“(2) Any relief or benefits which this Hon'ble Tribunal deems fit and proper including the cost of the application may also be given to the applicant.”*

3. Learned counsel for the respondents has raised a preliminary objection regarding the maintainability of this OA. His submission is that the applicant was not even enrolled in the Indian Navy; therefore, he was not subject to the Navy Act, hence this OA is not maintainable in this Tribunal.

4. In brief, the facts of the case are that the applicant had applied for his recruitment in the Indian Navy. The screening, physical and medical examination were done at preliminary stage. Thereafter a call letter dated 22.12.2016 was served on the applicant, through which he was directed to report to the Recruiting Office, INS Chilka on 16.02.2017. Police verification of the applicant was also done by the Police authorities to verify the character of the applicant. On 16.02.2017, during the Enrollment Medical Examination by Enrollment Medical Officer, he was declared unfit for enrollment in the Navy due to Indirect Inguinal Hernia (L.T.)

5. Admittedly, the applicant was not enrolled in the Navy and accordingly, he was not subject to the Navy Act. A Division Bench of Hon'ble Allahabad High Court presided over by its Chief Justice Hon'ble Dr Dhananjaya Yeshwant Chandrachud (as his Lordship then was), while hearing *Special Appeal No. 833 of 2015, Union of India thru' Secy and 2 others versus Kapil Kumar* on 24.11.2015, has considered the point involved in the instant case 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. Learned counsel for the applicant has not disputed the aforesaid factual and legal position of the case.

10. Therefore, in view of the specific pronouncement of Hon'ble Allahabad High Court in the case of **Kapil Kumar** (supra), this OA is not maintainable in this Tribunal.

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

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

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

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

August 14, 2018  
LN/-