

**COURT NO: 1**

**(RESERVED)**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**ORIGINAL APPLICATION No. 481 of 2021  
With M.A. No. 502 of 2021**

**Friday, this the 11<sup>th</sup> day of August, 2023**

**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**

**“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

Abhishek Badoni (No. 38348/M/138 Army Cadet), Son of Laxmi Prasad Badoni, Badoni Bhawan, Devpuram Colony, Tunwala Village: Dehradun - 248005

**..... Applicant**

Ld. Counsel for the Applicant : **Shri Yashpal Singh, Advocate**

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Chief of Army Staff, Army Headquarters, South Block, DHQ P.O. New Delhi - 110011.
3. Director (AFTI), Headquarters Integrated Defence Staff, Room No. 18, South Hutments, Kashmir House, Rajaji Marg, PIN - 900108.
4. Director General of Medical Services (Army), Integrated Headquarters of Ministry of Defence (Army), Adjutant General’s Branch, ‘L’ Block Hutments, PIN - 900256.
5. Invaliding Medical Board, Military Hospital, Kirkee, Pune through the President.

6. Commandant, National Defence Academy, PO NDA  
Khadakwasla, Pune - 411023.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Amit Jaiswal,  
Central Government Counsel.**

**ORDER**

**“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

*“(a) Issue / pass an order setting aside the order of withdrawal / struck off strength of the applicant from service on medical ground as intimated by letter dated 06.05.2019 (ANNEXURE No. 1 to the original application) with all consequential service benefits, after summoning the relevant original record.*

*(b) Issue / pass an order directing the respondents to consider and decide the appeal preferred by the applicant against the decision of the Invalidment medical board, in pursuance of the show cause notice dated 12.06.2018, within a specified time and with due communication to the applicant.*

*(c) Issue / pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*

*(d) Allowing this Original Application with cost.”*

2. This Application has been filed by the applicant with the prayer to quash the order of withdrawal from service on medical ground dated 06.05.2019 and allow the application with all consequential benefits.

3. Learned counsel for the applicant submitted that the applicant was selected on 27.06.2017 as a cadet in National Defence Academy (NDA) Khadakwasla for training for being commissioned as an officer in Army, Navy or Air Force as may be decided upon by the Government. In training he participated up to the satisfaction of authorities concerned. In January 2018, during course of training the applicant sustained injury "Fracture Lt Tibia". Despite injury the applicant continued his training to the best of his ability. He was admitted in Military Hospital Khadakwasla on 02.04.2018 for reduced sleep and apathy. On 03.04.2018, he was referred to Command Hospital, Southern Command, Pune where he was declared a patient of 'Acute and Transient Psychiatric Disorder Acute Schizophrenia like Psychiatric Disorder'. On 12.06.2018, he was recommended to be invalided out from service. A show cause notice dated 16.06.2018 was issued to which applicant submitted his reply on 13.06.2018 and he challenged the invaliding medical board and requested for his re-examination by a competent medical authority. His acceptance of withdrawal was pending and he was

send on leave wef 17.10.2018. A letter dated 06.05.2019 was issued intimating that Headquarters ISD (MoD) has approved the withdrawal of applicant and he has been struck off the strength with effect from 03.05.2019.

4. Learned counsel for the applicant further submitted that cases of cadets are maintainable in this Tribunal. He brought to the notice of the Tribunal the judgment rendered by a Single Bench of Rajasthan High Court in case of ***Nathulal Gurjar Vs Union of India and Another*** (S.B. Civil Writ Petition No. 17054 of 2012) dated 18.11.2013 and affirmed by a Division Bench of the same High Court on 22.08.2014 in Special Appeal (Writ) No 396 of 2014. He submitted that number of cases pertaining to cadets have been decided by various Tribunals from time to time, hence this case is also maintainable before this Tribunal. Learned counsel for the applicant prayed that respondents be directed to cancel the order of struck off strength of the applicant from service and consider the case of the applicant for reinstatement in service.

5. On the other hand, learned Counsel for the Respondents has rebutted all the allegations and averments made by the Applicant. He raised preliminary objection on maintainability of the case and submitted that since the applicant is not a person subject to Army Act, 1950, the Navy Act 1957 or the Air Force Act, 1950, the application is not maintainable in view of the provisions of Section 2

(i) read with Section 3 (o) of the AFT Act. He submitted that applicant is a cadet and he is not attested, therefore the Original Application is not maintainable before this Hon'ble Tribunal.

6. We have heard learned counsel for the parties on maintainability of the case and perused the rules and policy on the subject.

7. The question before us to decide is whether case of a cadet is maintainable before this Tribunal or not?

8. Without going into the merits of the case, it would be pertinent to first determine whether a case of an individual who has been withdrawn from Officer Training for commission in the Indian Army would fall within the purview and ambit of the AFT.

9. The Armed Forces Tribunal Act 2007 contemplates that for the purpose of providing a forum for adjudication or trial by the Armed Forces Tribunal of disputes or complaints with respect to the commission, appointments, enrolments and conditions of service in respect of persons subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950 and also for providing for a forum for appeals arising out of certain orders, findings or sentences of courts-martial held under the said three Acts, Parliament enacted the AFT Act and constituted the Armed Forces Tribunal. Section 2 of the AFT Act reads 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 dependents, heirs and successors, in so far as it relates to their service matters”.(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 dependents, heirs and successors, in so far as it relates to their service matters.”*

*(emphasis added )*

10. Chapter II of the AFT Act provides for establishment of the Tribunal; Chapter III deals with the powers, jurisdiction and authority of the Tribunal and Section 14 contemplates that the Tribunal constituted under the AFT Act is to exercise, on and from the appointed day, all the jurisdiction, which was exercisable by all Courts except the Supreme Court or a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution in relation to all service matters. Appellate jurisdiction is conferred on the Tribunal under Section 15 and the expression ‘service matters’ is defined in Section 3(o) of the AFT Act in the

following manner:-

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

*xxx xxx xxx*

*(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, 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 of dismissal or imprisonment for more than three months.”*

11. 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))

*“The expression "persons subject to" the Army Act 1950, the Air Force Act 1950 and the Navy Act 1957 are therefore terms which have a well defined connotation and meaning having due regard to the provisions of the three Acts to which we have made a reference above. The Armed Forces Tribunal Act 2007 specifies in Section 2 that its provisions shall apply to all persons who are subject to the Army Act 1950, the Air Force Act 1950 and the Navy Act 1957. Sub-section (2) enlarges the applicability of the Act to cover retired personnel subject to the aforesaid three Acts including their dependents, heirs and successors insofar as they relate to their service matters. When the provisions to which we have made a reference earlier are read together, it is evident that in order for the Tribunal to have jurisdiction under Section 14, the dispute must relate to a service matter as defined in Section 3(o) of the Act. **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.**”*



12. 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 an Commissioned Officer in the Indian Army. 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 their Order dated 28 May 2021.

“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-fine, a bare reading of Section 2 and Section 3(o) of the AFT Act 2007 and AFT Principal Bench Order referred above, it is crystal clear that jurisdiction of this Tribunal would arise only if the ‘service matters’, as defined in Section 3 (o) of the AFT Act, come into existence i.e. when a person has been subject to the Army Act, 1950, the Navy Act, 1957 or the Air Force Act, 1950 as the case may be. The issue being sought to be adjudicated lies outside the

purview of the AFT. The applicant is at liberty to seek remedial recourse as may be available in accordance with law to ventilate his grievances with regard to the impugned action.

14. The OA is **Disposed Off** accordingly.

15. No order as to costs.

**(Vice Admiral Atul Kumar Jain)**  
**Member (A)**

**(Justice Ravindra Nath Kakkar)**  
**Member (J)**

Dated : 11 August, 2023

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