

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Dy No. 1412 of 2018
In Re: OA No. nil of 2018

Friday, this the 25th day of May, 2018

Hon'ble Mr. Justice SVS Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

Daya Kumar Rajpoot, son of Roop Ram, resident of village Nazairpur,
 Post Nazarpur, District Etah.

.... Applicant

Ld. Counsel for the Applicant : **Shri Alok Kumar Yadav, Advocate**

Vs.

1. Union of India through its Secretary, Ministry of Defence, South Block, New Delhi.
2. Principal Controller of Defence Accounts (Pension), Allahabad.
3. Officer-in-Charge of Records Office, Topkhana, Record and Centre, Nashik Maharashtra.
4. Officer-in-Charge A.D.A Records through 99, A.P.O., Gopalpur, Orissa.
5. Mahesh Chandra (14871988 Ex-Hawaldar), son of Mukundi Lal, Caste-Aheer (Yadav), resident of village Ninawali, Post-Bhagner, Police Station-Eka, District Firozabad.

...Respondents

Ld. Counsel for the Respondents: **Dr Shailendra Sharma Atal,**
Advocate
 Assisted by Maj Rajshri Nigam,
 OIC Legal Cell

ORDER (Oral)

1. This OA has been filed by the applicant with following prayers:-

“A. For a direction to the respondents No. 1 to 4 for considering the case of the applicant and initiating the enquiry against the respondent No. 5 and taking necessary action.

B. For a direction to summon the service records of respondent No. 5 on the expenses of the applicant and copy of the same may be provided to the applicant which is custody in the office of opposite party No. 4.

C. Ant other order, which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case, also be passed in favour of the applicant."

2. There is a preliminary objection raised by the Registry that since the applicant is not subject to Army Act, therefore, this OA is not maintainable.

3. Heard learned counsel for the parties on the point of maintainability of this OA.

4. Learned counsel for the applicant has drawn our attention towards the Introduction clause of the Armed Forces Tribunal Act, 2007, hereinafter referred to as the Act, which reads as under:

"An Act to provide for the adjudication or trial by Armed Forces Tribunal of disputes and complaints with respect to commission, appointments, enrolment 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 to provide for appeals arising out of orders, findings or sentences of courts-martial held under the said Acts and for matters connected therewith or incidental thereto."

5. In the instant case, admittedly the applicant is a civilian, not governed by the Army Act, 1950, the Navy Act, 1957 or the Air Force Act, 1950 and he is challenging the appointment of Respondent No. 5 Mahesh Chandra. Learned counsel for the applicant has drawn our attention towards Section 3(o) of the Act, which reads as under:

"(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,

.....”

Learned counsel for the applicant has insisted on the words “any other matter, whatsoever” as mentioned in Section 3(o) (iv) of the Act, but a perusal of complete section shows that the words “any other matter, whatsoever” have been used in relation to service. At this stage, we are concerned with Section 2 of the Act, which 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 matter.”*

6. As already observed, in the instant case the applicant is admittedly a civilian and is not governed by any of the three Acts mentioned above. Virtually the applicant wants to make a complaint against an ex-Army personnel (respondent no. 5) to get an enquiry initiated against him on the ground that he got service in Army by filing

false certificates and now has retired. For that, he is free to move the competent authority bringing to its notice all necessary facts so that it may take an appropriate decision in the matter, but so far as the present OA is concerned, this Tribunal, keeping in view the aforesaid provisions of law, is of the confirmed view that it is not maintainable.

Accordingly, this OA being not maintainable is hereby dismissed.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

May 25, 2018
LN/-