

Court No. 1

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

M.A.No. 1220 of 2017

In Re:

O.A. No. nil of 2017

Wednesday, the 18th day April, 2018

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

Hira Lal, son of Amar Nath, resident of Chakiya Chak, Mishran,
Post Office Karchana, District Allahabad

.... Applicant

Learned Counsel for the Applicant: **Shri Shrish Chandra,
Advocate**

Verses

1. Union of India through Secretary, Ministry of Defence,
Government of India, New Delhi-110011
2. The Chief of Army Staff, Army Headquarters, Sena
Bhawan New Delhi-110011
3. The Commanding Officer, 5011 ASC Battalion (M.T.) C/o
56 APO.

...Respondents

Learned counsel for the Respondents: **Dr Shailendra Sharma Atal,
Advocate,**
Assisted by Maj Salen Xaxa, OIC Legal Cell.

ORDER (Oral) on M.A.No. 1220 of 2017

1. Heard learned counsel for the parties and perused the record.
2. This is an application for condonation of delay in filing the present OA, which has been moved after expiry of the period of limitation. By means of the present OA, the applicant has made the following prayers:

“i. To quash the impugned order of dismissal DO Part II dated 08.06.2009, after summoning the same.

ii. To direct the respondents to provide copy of the impugned order dated 08.06.2009 alongwith the copy of entire dismissal proceedings.

iii. To direct respondents to permit the applicant for joining the post of cleaner, along with all consequential benefits and further direct the respondent no. 3 to pay the salary towards the period between from 20.03.2010 up to 23.12.2010.

iv. To issue an order or direction that this Hon’ble Tribunal may deem fit and proper under the facts and circumstances of the case.”

3. In the objections filed on this application for condonation of delay, it has been pleaded on behalf of the respondents that against his dismissal from service, the applicant had preferred a Writ Petition bearing No. 53720 of 2009 before the Hon’ble Allahabad High Court, in which a counter affidavit was filed by the respondents annexing therewith the dismissal order dated

08.06.2009. It is further pleaded that in pursuance of the interim order dated 02.02.2010 passed by the Hon'ble High Court in the said writ petition, the applicant was permitted to join as Civil Camp Guard/Cleaner and he worked as such upto 23.12.2010 when he was released from the Unit Strength. It has also been pleaded that after the afore-mentioned writ petition, the applicant had also filed an OA bearing No. 239 of 2013 in the Central Administrative Tribunal.

4. The submission made on behalf of the respondents is that the applicant is a civilian and is not covered under the Army Act; therefore, this Tribunal has no jurisdiction to entertain the present O.A.

5. Learned counsel for the applicant, in reply to the aforesaid submission, has drawn our attention towards the conditions indicated in the appointment letter issued to the applicant by the respondents, wherein it is mentioned that he will be under Army Act, 1950 for disciplinary purpose. On the strength of this condition in the appointment letter, learned counsel for the applicant submits that for all practical purposes, the applicant shall be governed by the Army Act, 1950; therefore, this OA is maintainable before this Tribunal. In support of his submission, he has placed reliance on the pronouncement of the Hon'ble Apex Court in the case of **Dulu Devi versus State of Assam and others**, reported in (2016) 1 SCC 622, wherein the Hon'ble Apex Court in para 13 of the judgment, held as under:

“13. Indisputably, the appellant has been continuously servicing as a teacher since 1989 and pursuant to the order passed in the earlier writ petition the appellant was paid entire salary since the date when the salary was not paid. The High Court took notice of the fact that while considering the regularisation of services of the appellant, she being the seniormost teacher of the school was allowed to cross the efficiency bar two times, initially in the year 2003 and subsequently in the year 2005. The High Court in the impugned order further noted that the letter of termination was neither issued nor were the services of the appellant terminated. Admittedly, some of the terminated teachers filed their writ petition challenging the termination, which was interfered with by the High Court, but the Court observed that the said benefit cannot be granted to the appellant as she was not a party in the said writ petition. The High Court, assuming that the services of the appellant were terminated, refused to grant relief and dismissed the writ petition.”

6. Before proceeding further, we would like to reproduce the appointment letter issued to the applicant, which reads as under:

“APPOINTMENT LETTER

1. Officer Commanding 749 (Incep) ____ (UPT-12100) hereby appoints Shri Hira Lal son of Shri Amar Nath as a temporary Camp Guard in the Group ‘C’ ‘D’ post with effect from 19 July 90 ____ in the pay scale of Rs. 750-12-870-EB-14-940 revised from time to time against the existing vacancy released vide Army Headquarters letter No. A/26196/SAB/8/ST12 dated 6 Jun 90 subject to character verification.
2. He will be on probation for 2 years from the date of his appointment.
3. He will be under Army Act 1950 for disciplinary purpose.
4. His terms and conditions of service will be regulated as laid down in Army Instruction Number 182/51 ____ from time to time.

74916/P

(Indep)

- PI ASC (Civ GT)

Sd/- Illegible

19/7/90

(Jagdish Singh)

Lt Col

Officer Commanding”

7. A perusal of the aforesaid appointment letter clearly shows that only for disciplinary purpose, such an appointee shall be governed by the Army Act, 1950 but his terms and conditions shall be governed as laid down in Army Instruction No. 182/51. The heading of Army Instruction No. 182/51 lays down the terms and conditions of the service of a civilian personnel employed in Civilian G.T. Coys. ASC. A perusal of Army Instruction No. 182/51 clearly establishes that the personnel so appointed shall be treated as civilian. In this context, it would be relevant to quote Section 2 of the Armed Forces Tribunal Act, 2007, 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 dependants, heirs and successors, in so far as it relates to their service matters.

8. A perusal of the aforesaid Section clearly establishes that Armed Forces Tribunal Act, 2007 is applicable only to the persons who are governed by the Army Act, the Navy Act and the Air Force Act. As observed above, the service of the applicant was to be governed by Army Instruction No. 182/51 which indicates that the personnel so appointed shall be treated as civilian. Therefore, the submission of learned counsel for the applicant that since for disciplinary purpose, as per the conditions

mentioned in the appointment letter (supra), the applicant is to be governed by the Army Act, 2007, therefore, he shall be treated to be an army personnel for all practical purposes, has no substance. The case of **Dulu Devi** (supra) relied upon by the applicant's counsel is virtually of no help to him as the same was in different context, which may be on merits of that case but in no way deals with the issue of jurisdiction involved at present. At present, we are dealing with the question whether this Tribunal has jurisdiction to entertain this case and whether the service of the applicant was governed under the Army Act.

9. The Hon'ble Apex Court, in the case of **Santosh Devi versus Union of India and others**, reported in (2016) 13 SCC 92 has considered this aspect of the matter and held that during disembodied state, the members of Territorial Army shall not be governed by the Army Act and accordingly, they shall not be entitled to pensionary benefits as are available to the members to the Armed Forces. In the case in hand, admittedly, as per appointment letter (supra), the applicant will be under Army Act, 1950 only for disciplinary purpose and for all other purposes, his services shall be governed by Army Instruction No. 182/51, which deals with the civilian personnel. Therefore, the applicant cannot claim that his services shall be governed by the Army Act, 1950. Simply because the applicant was to be governed under Army Act, 1950 for disciplinary purpose, it would not mean that his services shall be governed by the Army Act for all practical

purposes. It is also clear from the appointment letter of the applicant. As already observed, the applicant was a civilian personnel, not governed under the Army Act; therefore, the submission to the contrary is absolutely devoid of merit.

10. Since the applicant's service conditions were not governed by the Army Act, 1950; therefore, this Tribunal lacks jurisdiction to entertain this OA.

11. Accordingly, the preliminary objections raised on behalf of the respondents, being valid objections, are hereby allowed. The application (M.A.No. 1220 of 2017) as well as the OA are hereby **dismissed as not maintainable**. The applicant is at liberty to seek remedy before the appropriate forum as may be available to him under law.

(Air Marshal BBPSinha)
Member (A)

(Justice SVS Rathore)
Member (J)

April 18, 2018

LN/-