

Reserved
Court No. 2

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION NO. 33 of 2016

Friday, this the 09th day of February, 2018

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

Raghvendra Pratap Singh, son of late Bahulochan Singh, resident of village Dulapur, Post- Nibi, District Raebareli.

....Applicant

Ld. Counsel for the applicant: **Dr. S.K.Singh**, Advocate

Versus

1. The Union of India through the Secretary, Department of Defence, New Delhi.
2. The Secretary, Department of Personnel and Training, Government of India, New Delhi.
3. The Chief of the Army Staff, Army H.Q. Defence H.Q., New Delhi.
4. The Director General of Supplies & Transport, Quarter Master General's Branch, Integrated HQ of MoD (Army), Sena Bhawan, New Delhi.
5. The Company Commander, 'C'Coy 5682 ASC Bn (MT) PIN-901627 C/O 56 APO

.....Respondents

Ld. Counsel for the Respondents: **Shri Bhanu Pratap Singh**, CGSC
assisted by Maj Rajshri Nigam,
OIC, Legal Cell.

ORDER

Per Justice SVS Rathore, Member (J)

1. We have heard learned counsel for the parties and perused the record.

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

- “ (a) to set aside the Item No. 13 of executive instruction dated 30.05.2013 issued by the Respondent No. 2 and consequential orders dated 03.12.2013 and 18.12.2013 passed by Respondents No. 4 & 5 respectively, as contained to Annexure No. 1 and 2 to this O.A.*
- (b) to direct the respondents to provide the benefit of compassionate appointment to applicant thereby reconsidering his case in the light of procedure/recommendations of Respondent No. 5 made earlier(Annex. No. 5,6 & 7), before passing of the instructions/orders in question.*
- (c) to pass such orders which deems fit and proper under the circumstances of the case.*
- (d) to award the cost of the application in favour of the applicant from respondents.”*

3. The admitted facts, necessary for the purposes of this OA, may be summarised as under:

The father of the applicant, No. 6627236 VEH/MECH Bahulochan Singh died on 15.01.2013 during service. The applicant being the son of late Bahulochan Singh applied for his compassionate appointment on the post of Lower Division Clerk (LDC) on 19.02.2013. All the documents as required by the respondents were also forwarded on 26.04.2013. However, after consideration of his case for compassionate appointment, the prayer of the applicant for compassionate appointment was rejected on the ground that a married son cannot be considered as dependent of a Government servant. The fact that the applicant was not eligible for compassionate appointment on the aforesaid ground was duly communicated to him. Feeling aggrieved by the order of rejection of his aforesaid prayer, the applicant has preferred this OA.

4. Learned counsel for the applicant has submitted that the services of the father of the applicant were controlled under the Army Act; therefore, this Tribunal is competent enough to grant the relief claimed. It has also been argued that the rejection of the applicant's prayer for compassionate appointment on the ground that he is a married son and not a dependent of the deceased, an army personnel is not sustainable and the action of the respondents while turning down his aforesaid prayer is absolutely illegal.

5. **Per contra**, Learned counsel for the respondents has submitted that the services of the applicant's father late Bahulochan Singh were governed under the Army Act only for disciplinary purposes, otherwise his service conditions were governed under the CCS Rules. It has also been argued that the point involved in the present case has been considered by a coordinate Bench of Armed Forces Tribunal, Regional Bench, Chandigarh vide its judgment dated 23.08.2012 in **OA No. 149 of 2011** and the same has attained finality; therefore, according to the view taken by Hon'ble Chandigarh Bench of Armed Forces Tribunal, this OA is not maintainable.

6. In reply, learned counsel for the applicant has argued that vide order dated 14.12.2017, the point of maintainability of this OA has already been considered by the Tribunal and the OA has been admitted for hearing, so the respondents cannot be permitted to raise this point again during the final hearing.

7. We have gone through the order dated 14.12.2017 whereby this OA was admitted. We would like to reproduce the relevant part of the said order as below:

"After hearing both sides, it is opined that the cse is fit for preliminary hearing on all aspects.

Admit.

List this case on 06.02.2018 for hearing, where the issue of jurisdiction can be revisited by the respondents. (Underlined by us.)

On the date fixed, parties shall file compilation of case law and chart of events. Original record shall also be produced by the learned counsel for the respondents on the next date fixed.”

8. Before proceeding further, we have gone through the judgment of the Hon'ble Armed Forces Tribunal, Regional Bench, Chandigarh dated 23.08.2012 in OA No.149 of 2011, whereby cases of 23 applicants were disposed of. In the said cases, the applicants had filed appointment letters of their fathers. However, the applicant, in the present case, has not filed appointment letter of his father. The Hon'ble Chandigarh Bench in the aforementioned OA, after considering the relevant rules and orders, has opined as under:

“The argument of the petitioners to seek redress from this Tribunal is primarily premises on their being subject to the Army Act. However, as is clear from their appointment letter, and a detailed reading of Army Instruction 182/1951, they are subject to the Army Act for the purposes of discipline only. We may also note that these individuals have not been ‘Enrolled or Attested’ under Army Rule 8 and Army Act Section 17. Their services cannot be terminated under Army Rule 13 as they are neither enrolled nor attested. Their term of engagement is as applicable to central government civilian employees and not 17 years as for an Army Sepoy implying thereby that they superannuate at 58/60 years of age and not on completion of 17 years of service being approximately 35 years of age. They do not hold Army ranks and are not paid as per Army pay scales but are appointed in a specific scale and grade. They can also be appointed on the basis of reservation for OBC/SC etc whereas no such reservation applies for enrolment in the Army. (Underlined by us.)

We may also note that similarly placed civilians are employed in Ammunition Depots, Border Roads, Military Engineering Services, Military Farms etc and may be subject to the Army Act under certain conditions by Government Notification that however, does not alter their terms and conditions of service which are specific to their appointment which in most cases is the CCS Rules.

In view of the foregoing, we are clearly of the view that the grievance of the petitioners is not cognizable by this Tribunal.”

9. Learned counsel for the applicant has drawn our attention towards the letter dated 16.04.2013 whereby the army authorities had asked the applicant's mother to forward certain documents for employment assistance in respect of the applicant and on the strength of aforesaid, he submits that the respondents are bound to provide compassionate appointment to the applicant.

10. We are not inclined to appreciate the above submission of applicant's counsel, as we are of the firm view that this OA is not maintainable. Hon'ble Armed Forces Tribunal, Regional Bench, Chandigarh, in an identical case, has dealt with the matter in detail and vide its order dated 23.08.2012 passed in OA No.149 of 2011 held that it being a matter relating to a civilian, the petition is not maintainable. We don't find any justifiable reason to deviate from the said view taken by Hon'ble Chandigarh Bench in the aforesaid case.

Accordingly, this OA being not maintainable is hereby **dismissed**.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

February 09, 2018

LN/-