

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.1 (E. Court)

O.A. No. 730 of 2021

Sub/AEC Arun Khanka
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>14.02.2022</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>Objection against maintainability of O.A. filed by the respondents is taken on record.</p> <p>Heard Shri Vijay Kumar Pandey, Ld. Counsel for the applicant and Shri Devesh Kumar, Ld. Counsel for the respondents.</p> <p>This Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-</p> <p>(i) <i>That this Hon'ble Tribunal may kindly be pleased to direct the opp. parties to comply the ROIs page no. 329, para 13, contains as annexure no. 1, in the interest of justice.</i></p> <p>(ii) <i>That this Hon'ble Tribunal may kindly be awarded the cost of Rs. 20,20,000/- (Rs. Twenty lac and Twenty Thousand Only) to the applicant against the opposite parties.</i></p> <p>(iii) <i>That this Hon'ble Tribunal may be pleased to pass any other order or direction which this Hon'ble Court may deem just and proper be passed in favour of the applicant."</i></p> <p>Brief facts of the case are that applicant was enrolled in the Army on 15.09.1995. The applicant has filed present O.A. against the inaction on the part of the opposite parties in not complying the ROIs page No. 329, para 13, in which a JCO can apply for last leg, 36 months prior from his date of retirement, in very illegal and arbitrary manner ignoring the ROI of his department, which is binding in nature. The applicant is due for retirement from Army service on 31.08.2023 and his three years started on 31.08.2020 for his choice/home town posting. As per ROI, applicant is fully entitled for the same but the opposite parties are overlooking the same in very illegal and arbitrary manner ignoring the facts and circumstances of the case. Being aggrieved, the applicant has filed the present Original Application to direct the respondents to issue his choice/home town posting order.</p> <p>The respondents in their objection filed against the maintainability of O.A. have submitted that instant Original Application is related to</p>

transfer/posting which is not maintainable before this Hon'ble Tribunal as per Section 3(o) (iv) of Armed Forces Tribunal Act, 2007.

Today, during the course of hearing, an objection has been raised by the learned counsel for the respondents inter alia on the ground that matter pertaining to transfer/posting is not included in purview of 'service matters' defined in Section 3(o) (iv), sub-section (ii) of the Armed Forces Tribunal Act, 2007. He further submits that an application in regard to service matters is maintainable in Armed Forces Tribunal only if it is included in definition of service matters given in Section 3(o) of the Act not otherwise. He further submits that transfer/posting case being excluded from the definition of service matters, therefore, application filed against the same is not maintainable in the Tribunal.

In support of aforesaid submission, learned counsel has placed reliance on the judgment of Armed Forces Tribunal (Principal Bench), New Delhi in O.A. No. 665 of 2020 in the matter of **Dfr Shatrughan Singh Tomar vs. Union of India and Ors**, decided on 07.04.2021. He pleaded that matter of transfer/posting is excluded from the definition of service matters in Section 3(o) (iv), sub-section (ii) of the Armed Forces Tribunal Act, 2007, therefore, present O.A. is barred by maintainability and as such is liable to be dismissed.

Learned counsel for the applicant submits that present O.A. has been filed against the inaction on the part of the opposite parties in not complying the ROIs page No. 329, para 13, in which a JCO can apply for last leg, 36 months prior from his date of retirement, in very illegal and arbitrary manner ignoring the ROI of his department, which is binding in nature. The applicant is going to be discharged from Army service on 31.08.2023 and his three years period already started on 31.08.2020 for his choice/home town posting. As per ROI, applicant is fully entitled for the same but the opposite parties are overlooking the same in very illegal and arbitrary manner ignoring the facts and circumstances of the case. Therefore, the Original Application filed by the applicant for his choice/home town posting is maintainable before this Tribunal. He pleaded to issue directions to the respondents to comply with the ROI and issue order of choice posting to the applicant.

During the course of hearing, learned counsel for the applicant also submitted that a threatening letter dated 16.12.2021 has been issued to the applicant by the respondents for filing of the case with regard to his posting in this Tribunal without taking permission from the Department which is illegal and punishable under Army Act/Rules. It is a threatening letter that amounts to interference in the affairs of this Tribunal for which Tribunal should take action against the officer and punish him.

The "service matters" as defined in Section 3(o) of the Armed Forces Tribunal Act, 2007, in so far as it is relevant for the instant case, is reproduced as under :-

"3(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 of 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 is of dismissal or imprisonment for more than three months;”

Perusal of record shows that the letter dated 16.12.2021 issued to the applicant is neither on record nor there any prayer in this regard in O.A. Hence, this Tribunal cannot take observance of any such letter which is not on record and therefore, nothing can be stated in this regard.

We find that matter of transfer/posting is excluded in definition of service matters of the Section 3(o) (iv), sub section (ii) of the Act and the same is not cognizable by the Tribunal. Therefore, we are of the view that transfer/posting case being excluded from the definition of service matters defined in Section 3(o) (iv), sub-section (ii) of the Armed Forces Tribunal Act, 2007, does not fall within the purview of ‘service matters’ and therefore, the same is not cognisable in Armed Forces Tribunal.

In view of the aforesaid, Original Application is **dismissed** with liberty to applicant to take recourse of such remedy as may be permissible under law with regard to the issue in question.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

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