ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No 35 OF 2019

Thursday, this the 17th day of January, 2019

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

Vishwajeet Haldar son of Shri Sudheer Haldar, resident of Ward Raj Nagar, Tehsil Sitarganj, district Udham Singh Nagar, Uttrakhand.

……Applicant

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

Versus

1. Union of India, through Secretary, MoD, Government of India, New Delhi.
2. Directorate General of Recruiting AGs Branch, West Block-III, Integrated HQ of MoD (Army), R.K. Puram, New Delhi – 110066.
3. HQ Recruiting Zone, Lucknow, 236, Mahatma Gandhi Road, Lucknow Cantt PIN 226002
4. Army Recruiting Officer, Almorah, district Almorah (UK), PIN 263610.

…Respondents

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

ORDER (ORAL)

1. By means of the instant O.A., the applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:-

(A) To recall and quash or set aside the Order dated 09 Aug 2017 in TA No. 32 of 2017 as being without jurisdiction.

(B) To direct the registry to send back the records of these cases to the Hon'ble High Court of Uttrakhand at Nainital.

(C) Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.

2. At the very outset it may be observed that the present petition has been filed by the applicant with delay of 10 months and 28 days. Since only a legal issue is involved in the petition, as such, we condone the delay in preferring the petition, admit the petition, and with the consent of learned counsel for the parties, we proceed to hear and dispose it of at the admission stage itself.

3. Heard learned counsel for the parties and perused the record.

4. A preliminary objection has been raised on behalf of the respondents regarding maintainability of the instant petition. It is submitted by learned counsel for the applicant that by a subsequent judgment it has been held that this Tribunal has no jurisdiction to entertain cases relating to enrolment in the Army because prior to enrolment an individual is not subject to the provisions of the Army Act. It is submitted that a co-ordinate Bench of this Tribunal entertained T.A. No. 32 of 2017 ***Vishwajeet Haldar vs. Union of India & ors*** decided on 09.08.2017 and dismissed the same on merits. It is submitted that judgement and order dated 09.08.2017 passed in aforesaid T.A. No. 32 of 2017 is without jurisdiction in view of the subsequent decision of this Tribunal on the point of jurisdiction in another case.

5. Facts necessary for adjudication of the controversy involved in the present petition are that the applicant, who was not selected and enrolled by the respondents, had challenged the denial of his recruitment in the Army by preferring Writ Petition before the Hon'ble High Court at Nainital which on establishment of the Tribunal was transferred to this Tribunal and was re-numbered as T.A. No. 32 of 2017. Vide order dated

09.08.2017 said T.A. was dismissed on merits. The operative portion of said order reads as under:

> *"7. The argument seems to be misconceived. There is no statutory or fundamental right of a person to get selected in the army unless he or she qualifies the test held for a particular post. Selection is a competitive process where a person has to compete with others against the limited number of seats and if his or her merit falls within the competitive zone of selection, his or her selection/recruitment is made as per his/her merit. The petitioner has not taken any ground with regard to violation or any provision of law in the aforesaid process. Under these facts and circumstances, we do not feel that any fundamental or statutory right of the petitioner has been violated in the matter while declining his recruitment.*
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> *8. The TA lacks merit and is hereby dismissed in limine."*

6. Subsequently, the co-ordinate Bench of this Tribunal in T.A. No. 33 of 2017 ***Jeewal Kumar vs. Union of India & ors*** along with T.A. No. 34 of 2017 ***Suraj vs. Union of India & ors*** has entertained similar controversy and vide judgment and order dated 25.10.2018 concluded as under:

> *7. Thus, a joint reading of the aforesaid provisions of the Armed Forces Tribunal Act shows that only the service matters of the persons subject to Army, Navy or Air Force Act are maintainable before this Tribunal. This point has been considered by the Division Bench of the Hon'ble High Court of Judicature at Allahabad in the case of Union of India vs. Kapil Kumar (Special Appeal No.833 of 2015) decided on 24.11.2015 presided over by Hon'ble Dr. D.Y. Chandrachud, Chief Justice (as his Lordship then was). Hon'ble Division Bench, after considering all the relevant provisions of the Armed forces Tribunal Act, 2007, has decided as under :*
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> > *"The above observations would indicate that before the Tribunal can exercise jurisdiction under Section 14, the person in relation to whom the dispute arises must be subject to one of the three legislations (the Army Act 1950, the Air Force Act 1950 or the Navy Act 1957) and the ingredients of the definition of the expression 'service matter' must also be fulfilled. The judgment of the learned Single Judge in Devi Saran Mishra vs. Union of India4 involved a situation where a direction was issued to the effect that all matters pending before this Court which were the subject matter of the Armed Forces Tribunal in terms of Section 34 of the Armed Forces Tribunal Act, 2007 were directed to be transferred to the Tribunal at Lucknow. Evidently, this decision of the learned Single Judge covers those cases which are within the ambit of the jurisdiction of the Tribunal having due regard to the provisions of Sections 14 and 15 of the Act. We, therefore, find merit in the appeal filed by the Union of India, challenging the decision of the learned Single Judge. In the present case, we find that the learned Single Judge has simply ordered that the proceedings be transferred under Section 34 without considering as to whether the matter was within the jurisdiction of the Tribunal under Section 14. The relief which the respondent seeks is to provide him entry into the*

service of the Army. <u>There is not even an averment to the effect that the respondent was enrolled as a member of the Armed Force. On the contrary, the respondent has 6 T.A.Nos. 33 and 34 of 2017 sought to question the decision by which he was declared unfit for enrollment on the ground that he did not meet the required medical standard. Such a dispute which arose prior to the enrollment of the respondent into the Armed Forces would not fall within the definition of the expression "service matters" under Section 3(o) because ex facie, the respondent is not a person who is subject to the Army Act 1950.</u>"

(underlined by us)

8. Since the point whether the pre-enrolment cases should be transferred to this Tribunal has been considered by a Division Bench of the Hon'ble High Court of Judicature at Allahabad and it has been decided that since the petitioner was not enrolled, therefore, he was not subject to the Army Act and hence this writ petition ought not to have been transferred by the learned Single Judge.

9. We have carefully examined the judgment, referred above, and rendered by the Coordinate Bench of this Tribunal. The judgment passed by the Division Bench of Hon'ble High Court of Judicature at Allahabad was not brought to the notice of this Tribunal in O.A.No.30 of 2017, therefore, the view expressed therein was per incuriam, hence it looses its binding effect. Therefore, in our considered view, the judgment of the Division Bench considering the issue involved here, is correct binding and has to be followed.

10. In view of the discussions, made hereinabove, T.A. Nos. 33 of 2017 and 34 of 2017 are not maintainable before this Tribunal. Accordingly, we direct the Registry to send back the records of these cases to the Hon'ble High Court of Uttrakhand at Nainital."

7. On the strength of the subsequent judgment of this Tribunal dated 25.10.2018 (supra), learned counsel for the applicant submitted that the judgment and order dated 09.08.2017 passed in T.A No. 32 of 2017 ***Vishwajeet Haldar vs. Union of India & ors*** whereby said T.A. was dismissed, deserves to be set aside as this Tribunal had no jurisdiction to entertain said T.A.

8. The sole point involved in this petition is as to whether the subsequent judgment holding that the Tribunal has no jurisdiction to entertain matters involving recruitment would nullify all the earlier judgments of the Tribunal on this point. We are afraid that this argument of learned counsel for the applicant has no legs to stand. If such submission of learned counsel for the applicant is accepted, then it will open not only the cases whereby the O.As/T.As were dismissed, but will

also amount to cancelling the enrolment of such persons in whose cases the Tribunal has directed to recruit/enrol the applicants. Such a situation would be unacceptable and against the settled principles of law.

9. Learned counsel for the applicant in para (5-F) of the petition has explained the meaning of "jurisdiction". Para 5-F reads as under:

> ***"5 (F)*** *Because Halsbury's Laws of England, IVth edition, volume 10, page 715, on the subject of "Jurisdiction of courts" enunciates:*
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> *"By 'jurisdiction' is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the court is constituted, and may be extended or restricted by similar means."*

10. It is true that where a Court or the Tribunal has no jurisdiction to entertain a controversy, then the order passed would be a nullity in the eyes of law. It is also settled proposition of law that issue of jurisdiction can be raised at any point of time during pendency of such a case. However, in the instant case, said issue is being raised by the applicant after final decision of the T.A. on merits on the basis of judgment passed in a different case. It is trite law that judgments passed by the Courts or Tribunals, as the case may be, have prospective effect unless there is a specific direction or undertaking that it shall operative retrospectively. (See **Kusumam Hotels Private Limited vs. Kerala State Electricity Board & others** (2008 (13) SCC 213).

11. Now we proceed to deal with the legal position. Learned counsel for the applicant has placed reliance on the pronouncement of Kerala High Court in the case of ***Panthalakunnummal Pokkuty'S vs. Puthalath Balakrishnan Nair*** reported in AIR 1967 Kerala 97 and has drawn our attention towards para-7 of said judgment which is reproduced as under:

> *"7. A judgment delivered by a Court not competent to deliver it is a mere nullity and cannot have any probative value between the parties. In the order of reference to the Full Bench in Sukh Lal v.Tara Chand, (1906) ILR 33 Cal 68 it was started that "jurisdiction may be defined to be the power of a Court to hear and determine a cause, to adjudicate or exercise any judicial power in relation to it". In other words, by jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The jurisdiction of a Court may be restricted by a variety of circumstances. The question of jurisdiction has to be considered with reference to the value, place and nature of the subject-matter. The classification into territorial jurisdiction, pecuniary jurisdiction and jurisdiction over the subject-matter is obviously of a fundamental character. The general rule is that the Court rendering a judgment suffers from want of jurisdiction in respect of any one of the above matters, is a nullity and may be ignored. Venkatrama Ayyar,J observed in Kiran Singh v. Chaman Paswan, AIR 1954 SC 340 at p 342:*
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> > *"It is a fundamental principle well established that a decree passed by a Court without jurisdiction is a nullity; and that invalidity could be setup whenever and wherever if is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties."*

12. We have carefully gone through the aforesaid pronouncement of Hon'ble Kerala High Court and are in respectful agreement. However, the facts of the case in hand are entirely different. In the case of ***Panthalakunnummal Pokkuty's*** case (supra), the Civil Court had passed a decree and an objection was raised in execution proceedings under Section 21 of the Code of Civil Procedure that the order under execution was passed without jurisdiction, hence the same cannot be executed. Thus, that was an entirely different matter because the question of jurisdiction was raised regarding a particular decree which was under execution. Such objection can be entertained by the Court executing the decree. In the case in hand, the judgement dated 09.08.2017 passed by the co-ordinate Bench of this Tribunal in T.A. No. 32 of 2017 (supra) has attained finality by elapse of time.

13. Hon'ble the Apex Court in the case of ***Union of India vs. Madras Telephone SC & ST Social Welfare Assn*** reported in (2006) 8 SCC 662 in para 21 (p 671) has considered this point and has observed thus:

> *"21. Having regard to the above observations and clarification we have no doubt that such of the applicants whose claim to seniority and consequent promotion on the basis of the principles laid down in the Allahabad High Court's judgment in **Parmanand Lal** case have been upheld or recognized by the Court or the Tribunal by judgment and order which have attained finality will not be adversely affected by the contrary view now taken in the judgment **Madras Telephones.** Since the rights of such applicants were determined in a duly constituted proceedings, which determination has attained finality, a subsequent judgment of a court or Tribunal taking a contrary view will not adversely affect the applicants in whose cases the orders have attained finality. We order accordingly."*

14. In view of the said settled principle of law propounded by Hon'ble the Apex Court, we are of the considered view that the O.A. preferred by the applicant is absolutely misconceived and is abuse of the process of the Court. Hence it is liable to be dismissed with cost.

15. It is accordingly **dismissed** in limine with cost of Rs. 1000.00 (Rupees one thousand) which the applicant shall have to deposit within one month from today failing which it shall be recovered as arrears of land review.

Cost when recovered shall be remitted to Armed Forces Tribunal Bar Association, Lucknow for enrichment of library.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : January 17, 2019
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