

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No. 1 (Sl. No. 51)

TA No. 42 of 2022

Ashutosh Tiwari, S/o **Applicant**
Late Hav. Chandrika Prasad Tiwari
By Legal Practitioner for the Applicant : **Wg Cdr S.N. Dwivedi** (Retd), Advocate

Versus

Union of India & Others **Respondents**
By Legal Practitioner for Respondents : **Dr. Shailendra Sharma Atal**, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><u>23.03.2023</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Atul Kumar Jain, Member (A)</u></p> <p style="text-align: center;">Objection against maintainability of the Transferred Application filed by the respondents is taken on record.</p> <p style="text-align: center;">Heard Wg Cdr S.N. Dwivedi (Retd), Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents.</p> <p style="text-align: center;">This petition has been filed by the applicant against cancellation of his candidature for the enrolment under UHQ Quota by the respondents after being provisionally selected for enrolment in the Army (AMC) in Driver trade.</p> <p style="text-align: center;">Learned counsel for the applicant submitted that applicant was sponsored by his elder brother and therefore, applicant should be treated as dependent to his elder brother and accordingly, his candidature is considerable under the existing policy of recruitment under UHQ Quota. Since the applicant has applied as dependent to his elder brother and not as dependent son, therefore, he should be treated as selected candidate in the Army and be permitted to join service forthwith.</p> <p style="text-align: center;">Learned counsel for the respondents submitted that earlier the applicant filed OA No. 41 of 2010 before this Tribunal against cancellation of his selection in Driver trade, which was dismissed by this Tribunal vide order dated 05.07.2010. Thereafter, applicant filed Writ Petition No. 6126 (S/S) of 2010 before the Hon'ble High Court, Lucknow Bench which has been transferred to this Tribunal and registered as TA No. 42 of 2022 which is not maintainable before this Tribunal being barred by the principle of Res Judicata. He pleaded for dismissal of the petition at the admission stage being not maintainable before this Tribunal.</p> <p style="text-align: center;">On perusal of records, we find that applicant was provisionally selected for enrolment in the Army in Driver trade but he was not finally</p>

selected/enrolled as he was found not entitled to be extended the benefit of relaxation given in enrolment criteria to a son of serving/retired soldier. As per policy for enrolment under UHQ quota, applicant's two brothers have already availed the facilities of UHQ quota who were enrolled in the Army in the year 1996 and 1999 and therefore, applicant's candidature was cancelled being against the policy.

Since the applicant was not enrolled in the Army, he is not subject to Army Act, 1950 and therefore, petition filed by the applicant before the Hon'ble High Court, Lucknow Bench and transferred to this Bench is not maintainable before this Tribunal.

Section 2 of the Armed Forces Tribunal Act, 2007, enumerates the persons, to whom the provisions of the said Act are applicable. It may be reproduced as follows :-

"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".

Section 14 of the Armed Forces Tribunal Act, 2007, in so far as it is relevant for the instant case, is reproduced as under :-

"14. Jurisdiction, powers and authority in service matters .- (1) Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority, exercisable immediately before that day by all courts (except the Supreme Court or a High Court exercising jurisdiction under article 226 and 227 of the Constitution) in relation to all service matters.

(2) Subject to the other provisions of this Act, a person aggrieved by an order pertaining to any service matter may make an application to the Tribunal in such form and accompanied by such documents or other evidence and on payment of such fee as may be prescribed.

(3) On receipt of an application relating to service matters, the Tribunal shall, if satisfied after due inquiry, as it may deem necessary, that it is fit for adjudication by it, admit such application; but where the Tribunal is not so satisfied, it may dismiss the application after recording its reasons in writing.

(4).....

(5) The Tribunal shall decide both questions of law and facts that may be raised before it."

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 -”

Section 2 of the Army Act, 1950 enumerates the persons, to whom the provisions of the said Act are applicable. It may be reproduced as follows:

“2. Persons subject to this Act.- (1) The following persons shall be subject to this Act wherever they may be, namely:-

(a) officers, junior commissioned officers and warrant officers of the regular army;

(b) persons enrolled under this Act;

(c) persons belonging to the Indian Reserve Forces;

(d) persons belonging to the Indian Supplementary Reserve Forces when called out for service or when carrying out the annual test;

(e) officers of the Territorial Army, when doing duty as such officers, and enrolled persons of the said Army when called out or embodied or attached to any regular forces, subject to such adaptations and modifications as may be made in the application of this Act to such persons under sub-section (1) of Section 9 of the Territorial Act, 1948 (56 of 1948);

(f) persons holding commissions in the Army in India Reserve of Officers, when ordered on any duty or service for which they are liable as members of such reserve forces;

(g) officers appointed to the Indian Regular Reserve of Officers, when ordered on any duty or service for which they are liable as members of such reserve forces;

(h) omitted.

(i) persons not otherwise subject to military law who, on active service, in camp, or on the march or at any frontier post specified by the Central Government by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, the regular army.

(2) Every person subject to this Act under clauses (a) to (g) of sub-section (1) shall remain so subject until duly retired, discharged, released, removed, dismissed or cashiered from the service.”

Upon reading Section 2 of the AFT Act, 2007 and Section 2 of the Army Act, 1950, it is clear that applicant is not subject to Army Act and

therefore, this application filed under Section 14 of the AFT Act, 2007 is not maintainable before this Tribunal.

It appears that Writ Petition No. 6126 (S/S) of 2010 filed before the Hon'ble High Court, Lucknow Bench has erroneously been transferred to this Bench, which being not maintainable before this Tribunal is returned herewith to the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench for their decision/disposal.

Registry is directed to send back complete record of Writ Petition No. 6126 (S/S) of 2010 to the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

SB