

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH AT NAINITAL)
Misc. Application No. 1248 of 2018
(Inre O.A. No. Nil of 2018)**

Wednesday, this the 31st day of October, 2018

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

Prem Singh Saun S/O Daulat Saun,
R/O Basabazar,
Distt-Pithoragarh.

..... Applicant

Ld. Counsel for the: None for the Applicant.
Applicant

Versus

1. Union of India through Secretary,
Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army Headquarters,
New Delhi.
3. Head Quarter, Rtg, Zone (U.P. & U.K.),
C/O 56 APO.
4. Director, Army Recruiting Office, Pithoragarh,
Uttarakhand.

..... Respondents

None appeared for the Applicant.
Shri Namit Sharma, learned counsel for the respondents.

ORDER (Oral)

“Per Hon.Mr.Justice S.V.S.Rathore, Member (J)”

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

“(i) *To issue order or direction to quash the impugned order bearing No. R/1427/RTI of dated 16.03.2017 along with order dated R/1427/RTI dated 29.01.2017 along with its effect and operation also after calling the entire records from the respondents.*

- (ii) *Issue an order or direction to the respondents to recruit the application in pursuance to the recruitment process held in November 2000 as soldier or any post which this Hon'ble Court may deem fit and proper under the circumstances of the case, had it been the impugned orders were never in existence.*
- (iii) *Issue an order or direction for awarding damages to the applicant in tune of Rs 2 Crores on account of arbitrary and malicious act of the respondents, due to which the applicant suffering from mental, financial and social agony.*
- (iv) *Any other relief which the Hon'ble Court may deem fit and proper in the circumstances of the case."*

2. At the very outset, Learned Counsel for the respondents submits that this O.A. is not maintainable. It is also submitted on behalf of the respondents that until and unless, a person is enrolled in the Army, he is not subject to the Army Act, therefore, this O.A. is not maintainable before this Tribunal.

3. The case was taken up in the revised list, but none appeared on behalf of the applicant to argue on the point of maintainability.

4. It is clear that the applicant appeared for his recruitment in the Army in pursuance of the recruitment process held in November 2000, however, he could not succeed.

5. Learned counsel for the respondents has argued that the applicant was not enrolled in the Army. His prayer is that his name be included in the list of successful candidates. It is also submitted on behalf of the respondents that until and unless, a person is enrolled in the Army, he does not become subject to the Army Act, therefore, the O.A. is not maintainable before this Tribunal.

6. Before proceeding further, we would like to reproduced certain provisions of the Armed Forces Tribunal Act, 2007. Section 2 of the Act deals with the applicability of the Act, 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 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 (45 of 1959), including their dependants, heirs and successors, in so far as it relates to their service matters."

Section 3(O) of the Act defines service matter, which reads as under:

(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 to 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;

Section 14, under which the Original applications are filed before this Tribunal, is also relevant to some extent in this matter. Relevant part of Section 14 reads 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.”

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 :

“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 India 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. 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 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."

(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 held 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, because AFT has no jurisdiction to entertain matters of these persons who are not subject to the Army Act, Navy Act and Air Force Act.

9. In view of the discussions, made hereinabove, O.A. No. Nil of 2018 is not maintainable before this Tribunal and is accordingly **dismissed.**

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : 31st October, 2018
PKG