

Court No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

Dy No. 1649 of 2018
Inre O.A. No. Nil of 2018

Wednesday, this the 4th day of July, 2018

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

No. 1040471K Hav/Clk Ram Shankar Singh
 Son of Late Shambhu Dayal
 Serving with 358 DSC Platoon
 att to Armed Forces Medical Stores Depot,
 PIN 900450, C/o 56 APO

.....Applicant

Ld. Counsel for : **Shri R. Chandra, Advocate**
 the Applicant

Versus

Union of India & Others

.....Respondents

Ld. Counsel for the : **Shri V.P.S. Vats**
 Respondents **Ld. Counsel for Central Govt.**

ORDER (Oral)

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed the following reliefs :-

“(I) Hon'ble Tribunal may be pleased to direct the respondent No 3 to consider the application dated 15/05/2018 of applicant for last posting as per Policy Compendium 2007.

(ii) Hon'ble Tribunal may be pleased to direct the respondents to consider applicant's case under provision of Para 27 of DSC Records ROI No 02/2006 and posting order be cancelled under provisions of ROI so that applicant can prepare/finalization his pension documents.

(III) Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.”

2. An interim prayer has also been made that during pendency of the present O.A., the respondents may be restrained to issue posting order, while remaining service is 18 months.

3. In brief, the facts, are that the applicant was enrolled in the DSC on 15.07.2001 and at present he was posted at Armed Forces Medical Stores Depot, Lucknow since 03.07.2016 on compassionate grounds due to his wife's medical treatment under the provisions of Defence Security Corps Record. The period of compassionate grounds posting is maximum two years, which is completing on 15.07.2018. On 31.03.2020 the applicant is to be released from service. It is submitted that as per policy, the person cannot be posted when his discharge is within 18 months. Admittedly, from the date of posting of the applicant, there is 20 months period for his discharge. The respondent no.3 issued posting order on 10.05.2018 in respect of the applicant to 120 DSC Platoon to 3 Adv Base Wksp, Udhampur (J & K).

4. Virtually, the prayer of the applicant is the stay of his transfer and restrain the respondents so that the applicant be not directed to join at Udhampur in the State of Jammu & Kashmir and, therefore, he should be permitted to continue his duty at Lucknow.

5. At the outset, on behalf of the respondents, a preliminary objection has been raised on the point of maintainability of the present O.A. It is submitted that by virtue of Section 3 (o) of the Armed Forces Tribunal Act, 2007, the transfer and posting orders are not covered as service matters. Section 3(o) of the Armed Forces Tribunal Act, 2007 reads 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 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;

(underlined by us)

6. Learned counsel for the applicant has argued that it would be covered under 3 (o)(iv) i.e. “any other matters, whatsoever”, but we are not the least impressed with the submission of the learned counsel for the applicant, because the words “any other matters, whatsoever” may include any other matters, which are not defined in paragraphs (i), (ii) and (iii) of Section 3(o) of the Act. But by virtue of the following excluding clauses, the transfer and posting matters, including the change of place of unit and posting whether individually or as a part of unit formation, have been specifically excluded from the purview of service matters. Law is settled that what cannot be permitted directly, cannot be permitted indirectly. The ultimate purpose of this O.A. is to get his posting to 3 Adv Base Wksp, Udhampur (J & K) cancelled and to issue direction to continue on his place of present posting.

7. Section 14 of the Armed Forces Tribunal Act, 2007 deals with the jurisdiction, powers and authority in service matters. Section 14 (1) and (2) 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.”

8. Thus, the aforesaid provisions make it clear that in service matters relating to a person governed by the Army Act, Navy Act or Air Force Act, can be entertained by the Armed Forces Tribunal Act, but by virtue of the exclusion clause (ii) to Section 3(o) of the Act, the orders of transfer and posting have been specifically excluded from the domain of service matters. Thus, the transfer and posting matters, not being service matters, under the provisions of AFT Act, such disputes can not be entertained in this Tribunal.

10. In view of the specific provisions of the Armed Forces Tribunal Act, quoted above, this O.A., whereby interference of this Tribunal has been prayed for to stay the posting order, is not maintainable and accordingly, it is **dismissed** as not maintainable.

(Air Marshal B.B.P. Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: 04th July, 2018
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