

Court No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****O.A. No. 304 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)**

JC 340087N Subedar, Vinod Kumar
 Son of late Madan Singh,
 G.E. (South), MES, Meerut Cantt, Meerut
 Resident of Nanhera Khurd Must,
 Post – Baheara, District Saharanpur-247453

.....Applicant

Ld. Counsel for : **Shri Ziauddin Khan, Advocate**
 the Applicant

Versus

Union of India & Others

.....Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal**
 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 :-

“(1) To issue an appropriate order or direction thereby quashing and setting aside the impugned order dated 18.05.2018 passed by the respondent No. 3 whereby the applicant has been transferred from Meerut Cantt. to 60 Engineering Regiment, Sikkim, as contained in Annexure No. 1 to the Original Application to the extent it relates to the applicant, after summoning the original records;

(2) *To issue an appropriate order or direction to the respondents to allow the applicant to work and perform his duties at the preset place of posting at Meerut Cantt. With consequential benefits as admissible in accordance with law;*

(3) *Grant such other or further relief to which the applicant may be found entitled to, and allow this application with costs.”*

2. As per Para 9 of the O.A., an interim prayer has been made, which reads as under :

“The Hon’ble Tribunal may kindly be pleased to stay the operation and implementation of the impugned order of transfer dated 18.05.2018 (Annexure-1) to the extent it relates to the applicant with a further direction to the respondents to allow the applicant to work and perform his duties at the present place of posting at Meerut Cantt. and to pay him salary accordingly.”

3. In brief, the facts, are that the applicant joined the Indian Army in 1991. From May 2013, the applicant remained posted at Udhampur. From Udhampur, he was transferred to Meerut, wherein he has joined in 2018. It is pleaded that as per the Policy, the applicant after posting in insurgency area, the applicant was entitled to remain posted for two tenures of three years each in Peace Area, but the respondents have passed an order dated 18th May 2018, whereby the applicant has been transferred to 60 Engineer Regiment, C/0 99 APO situated in Sikkim, which is again a War Area. Thus, the applicant has virtually made a prayer for the stay of his transfer order.

4. 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)

5. 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 sub clauses (i), (ii) and (iii) of Section 3(o) of the Act. But by virtue of the exclusion 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. Therefore, what cannot be permitted directly, cannot be permitted indirectly. The ultimate purpose of this O.A. is to get his posting to 60 Engineer Regiment, C/0 99 APO situated in Sikkim cancelled and to issue direction to continue his duty on his place of present posting.

6. 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.”

7. Thus, the aforesaid provisions make it clear that only 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 Section 3(o) (ii) of the Act, (underlined by us in earlier part of this order). 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 Armed Forces Tribunal Act, such matters cannot be entertained by this Tribunal.

9. 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
PKG