

Reserved

Court No.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 769 of 2023

Monday this the 06th day of May, 2024

Hon'ble Mr. Justice Anil Kumar, Member (J)

Hon'ble Vice Admiral Atul Kumar Jain, Member (A)

Kashi Kumar, S/O Bara Babu Roy, R/O Village & Post- Jabalpur,
PS – Patory, Distt- Samastipur, State- Bihar.

.....Applicant

Ld. Counsel for : **Shri Ghan Shyam Singh, Advocate**
the Applicant

Versus

1. Union of India, through, the Secretary,
Ministry of Defence, New Delhi.
2. Chief of the Army Staff,
Integrated Headquarters of Ministry of Defence (Army)
South Block, DHQ, New Delhi.
3. Comondor AMC Centre & College, PIN-900450,
C/o 56 APO, Lucknow

.....Respondents

Ld. Counsel for the : **Ms Appoli Srivastava,**
Respondents **Ld. Counsel for Central Govt.**

ORDER

“Per Hon’ble Mr. Justice Anil Kumar, Member (J)”

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) To issue an appropriate order or direction to the respondent to enrol the applicant in The Indian Army (AMC) relating to UHO QUOTA ENROLMENT: CEE HELD ON 28 FEB 2021, in which applicant was declared successful, by setting aside the impugned order dated 23 Dec, 2022 which was communicated to the applicant along with letter dated 22 Feb, 2023.

(ii) To summon the record of the applicant relating to the aforesaid selection/ enrolment process.

(iii) To issue an appropriate order or direction which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case including an order of awarding damages as well as cost of the instant application in favour of the applicant and against the respondents, thereto.

(iv) Allow the O.A. with costs.”

2. Briefly stated facts of the case are that on 28.02.2021 the CEE under UHQ Quota Enrolment Scheme was held and the applicant was informed through E Mail by the authority concerned that he has provisionally been selected for recruitment as SOL Clk/SKT on the basis of merit list of CEE. On 03.02.2022 he was informed that criminal case is pending against him since 08

December 2020. Due to involvement in criminal case, his candidature was cancelled vide order dated 23.12.2022. Being aggrieved, the applicant has filed instant O.A. with the prayer to enrol him in the Indian Army.

3. Learned counsel for the applicant submitted that applicant cleared all tests including other prerequisites for selection in the Indian Army (AMC) and was enlisted the best in the merit list amongst 10 candidates. On 17.04.2021 the applicant submitted all documents including qualification certificates at AMC Centre & College, Lucknow. On 03.02.2022, he was informed by the respondents that criminal case is pending against him under Section 147, 148, 341, 323, 379, 324 and 506 of Indian Penal Code since 08 December 2020. He was informed vide letter dated 02.04.2022 to submit final judgment of Court regarding aforesaid criminal case. The applicant informed that he has been acquitted vide judgment and order dated 19.04.2022 passed by Judicial Magistrate Samastipur, Bihar. Learned counsel for the applicant prayed that since the applicant passed all tests for recruitment and he was acquitted in the criminal case, respondents be directed to allow the candidate to join training.

4. On the other hand, learned counsel for the respondents submitted that while holding the selection process, the individuals are shortlisted for enrolment and then the enrolment process was

completed in accordance with Army Act. Merely by having been selected in physical, medical and entrance examination, a person is not covered under the provisions of Army Act. The selection process of physical test, medical test and competitive examination is nothing but a process for short listing of a desirable candidate to take him for enrolment and thereafter once he is found fit for enrolment after the elaborate procedure, he is said to be enrolled in the Army. After the successful completion of enrolment as provided under Section 15, the person is subject to attestation and the process of 'attestation' is provided in Army Act & Rules 1954. After attestation a person becomes subject to Army Act 1950.

5. Learned counsel for the respondents raised preliminary objection on maintainability of the case and argued that the applicant passed tests and he had only been considered for enrolment but he was not enrolled in the Army, hence he is not subject to Army Act 1950. It is also submitted by the learned counsel for the respondents that until and unless, a person is enrolled in the Army, he does not become subject to the Army Act. Hence the instant Original Application is not maintainable before this Tribunal in view of provisions 2 (i) read with Section 3 (O) of AFT Act. This Act will apply only to such persons who are subject to Army Act 1950, Navy Act 1957 and Air Force Act 1950 including their dependents, heirs and successors in so far as it relates their service matters. Learned counsel for the respondents

prayed that since the applicant is not covered under the definition of Army Act, this Original Application is not maintainable at this Tribunal and is liable to be dismissed.

6. We have heard learned counsel of both the parties and perused the rules on the subject.

7. The common question involved in this matter is as to whether the applicant who according to respondents is not subject to Army Act 1950 can invoke the jurisdiction of this Tribunal for redressal of his grievances which pertains to recruitment in the services of Armed Forces. Before proceeding further, we would like to reproduce 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.

8. Thus, a joint reading of the aforesaid provisions of the Armed Forces Tribunal Act show 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) and AFT Principal Bench, New Delhi in O.A. No 17 of 2015 (RB Jaipur) ***Kaptan Singh and Others Vs Union of India*** decided on 28 May 2021. 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 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 enrolment on the ground that he did not meet the required medical standard. Such a dispute which arose prior to the enrolment 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)

9. As per judgments discussed above, first requirement of law is that the AFT Act would apply only to such persons who are subject to Army Act as indicated in Sub Section (1) and (2) of Section 2. Section 3 (O). Since the point whether the pre-enrolment case is maintainable before the Tribunal has been considered by a Division Bench of the Hon'ble High Court of Judicature at Allahabad and AFT Principal Bench, New Delhi in O.A. No 17 of 2015 (RB Jaipur) **Kaptan Singh and Others Vs Union of India** decided on 28 May 2021 and it has been held that since the applicant was not enrolled, therefore, he was not subject to the Army Act and hence this Tribunal has no jurisdiction to entertain matters of these persons who are not subject to the Army Act, Navy Act and Air Force Act.

10. In view of the discussions, made hereinabove, O.A. No. 769 of 2023 is not maintainable before this Tribunal and is accordingly **dismissed** with liberty to the applicant to take recourse to such

remedy or procedure as may be available to him in accordance with law to ventilate his grievances with regard to impugned action.

11. No order as to costs.

12. Miscellaneous applications pending, if any, shall stand disposed off.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated: 06 May 2024.
Ukt/-