

10/6

ARMED FORCES TRIBUNAL
REGIONAL BENCH, KOLKATA

O. A. No. - 91/2017

Md. Rahamaatulla Sk.

..... APPLICANT

Versus

Union of India & Others

..RESPONDENTS

For the Applicant

: Mr. Subhash Chandra Hazra

For the Respondents

: Mr. Ajay Chaubey

CORAM :

HON'BLE MS JUSTICE ANJANA MISHRA, MEMBER (J)
HON'BLE LT GEN BOBBY CHERIAN MATHEWS, MEMBER (A)

O R D E R

05.05.2022

1. This Application pertains to alleged procedural lacunae and shortcomings in the conduct of Recruitment Rally/Examination held at Berhampur, Dist – Murshidabad (WB) on 26.02.2017.
2. The Applicant, an Ex-serviceman has sought redressal for being denied enrolment of his son due to shortcomings in the enrolment process carried out in the Recruitment Rally held at Berhampur Stadium, Murshidabad (WB). He has sought the relief from the Armed Forces Tribunal also applies to retired personnel subject to the Army act/Navy Act/Air Force Act including their dependents, heirs and successors in so far as it relates to the service matters.
3. The Ld. Counsel for the Respondents has rebutted all the allegations / averments made by the Applicant.
4. Without going into the merits of the case, it would be pertinent to first determine whether the case of an individual who has not qualified in a Recruitment process for enrolment in the Indian Army would fall within the purview and ambit of the AFT.
5. The Armed Forces Tribunal Act, 2007 is explicit on the applicability as defined in Section 2 of the Act.

“(1) The provisions of this Act shall apply totally persons subject to 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) and the Air Force Act, 1950 (45 of 1950), including their dependents, heirs and successors in so far as it relates to their service matters”.

6. The definitions of service matters has also been clearly defined in Section 3 (o) of the AFT Act, 2007.

“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), pensions 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 trial where the punishment of dismissals awarded;
- (iv) Any other matter, what so ever, but shall to include matters relating to,
- (v) Orders issued under Section 18 of the Army Act , 1950 (46 of 1950), Sub-Section (1) of Section 15 of the Navy Act (62 of 1957) and Section 18 of the Air Force Act, 1950 (45 of 1950) and,
- (vi) 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 Army Force Act 1950 (45 of 1950).
- (vii) Leave of any kind.
- (viii) Summary court martial except where the punishment is of dismissal or imprisonment for more than three months’.

7. The issue of service matters and jurisdiction of the AFT has been very clearly defined by Division Bench of the Hon’ble Allahabad High Court in the case of Uol & Ors Vs. Kapil Kumar (Special Appeal No. 833 of 2015) IANU/UP/2042/2015).

“The expression “persons subject to” The Army Act 1950, The Air Force Act, 1950 and the Navy Act, 1957, are therefore terms which have a well defined connotation and meaning having due regard to the provisions of the three Acts, to which we have made a reference above. The AFT Act, 2007 specifies in Section 2 that its provisions shall apply to all the person who are subject to the Army Act, 1950, The Air Force Act, 1950 and the Navy Act, 1957. Sub Section (2) enlarges the applicability of the Act to cover retired personnel subject to the aforesaid three actions including their dependents, heirs and successors in so far as they relates to their service matters. When the provisions to which we have made a reference earlier to be read together, it is evident that in order for the Tribunal to have jurisdictions under section 14, the dispute must

relate to a service matter as defined in Section (j) (o) of the Act, and the basic requirement of being a service matter is that it masteries in relation to persons who are subject to the Army Act, 1950, The Air Force Act, 1950 and the Navy Act, 1957."

8. That issues pertaining to recruitment to a person being enrolled in the Armed Forces do not come under the jurisdiction of the AFT has further been explicitly clarified by the Three Member Bench of the Armed Forces Tribunal, Principal Bench, Order in the case **Kaptan Singh Vs. UOI and Ors and 17 other applicants (O. A. 17/2015-RB, Jaipur vide their Order 28.05.2021.**

"Accordingly, we answer the reference by holding that as the applicants are not subject to the Army Act, 1950, The Navy Act, 1957 or the Air Force Act, 1950, as the case may be, this Tribunal has no jurisdiction to deal with the matter and the dispute canvassed by them in the applications filed U/S 14 of the AFT Act, 2007 does not fall within the ambit of service matters defined in Section (J) (o), of the AFT Act, 2007. The reference is an answer recorded accordingly".

9. In fine, a bare reading of Section 2 and Section 3 (O) of the AFT Act, 2007, to read in conjunction with the Allahabad High Court Judgement referred in Para 7 and AFT, Principal Bench Order referred in Para 8 above, it is crystal clear that the issue being considered lies outside the purview of the AFT. The Applicant is at liberty to seek remedial recourse as may be available in accordance with law to ventilate his grievance with regard to the impugned action.

10. The case stands disposed off accordingly.

11. No order as to costs.

(LT GEN BOBBY CHERIAN MATHEWS)
MEMBER (A)

(JUSTICE ANJANA MISHRA)
MEMBER (J)

MC