

FORM NO - 4
{SEE RULE 11(1)}
IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA
ORDER SHEET

APPLICATION NO : O. A. No.43/2014

APPELLANT (S)

Sri Taka Ram Sharma

RESPONDENT(S)

Union of India & 3 Ors.

LEGAL PRACTITIONER FOR APPELLANT(S)
Mr. Partha Banerjee

LEGAL PRACTITIONER FOR RESPONDENT(S)
Mr. Anand Bhandari

ORDER OF THE TRIBUNAL

Order No. 5

Dated: 03.06.2015

Mr. Partha Banerjee, Id. advocate appears on behalf of the applicant and Mr. Anand Bhandari, Id. advocate for the respondents is present. Major Narendra Singh, OIC, Legal Cell, HQ Bengal Area is also present.

Heard Id. counsel for both sides. The applicant who had been working as Laskar Tindal, Group-'D' Civilian since 26.07.1963 in the Indian Air Force approached this Tribunal for payment of disability pension. While approaching the Tribunal the applicant has admitted that his service is guided under the Central Civil Service Rule-

Mr. Bhandari, Id. adv. for the respondents submits that the applicant is not an Armed Forces personnel, hence, the petition is not maintainable. The respondents seems to be correct. Admittedly, petitioner's service conditions are governed by the Central Service Rules and Regulations. His service conditions are not governed by any rules and regulations under the Army Act. Accordingly, he does not seem to be an Armed Forces personnel and is not entitled to approach the Armed Forces Tribunal.

Hon'ble Supreme Court reported in 2014 Vol.VII SCC Page 303 in a case of *Union of India and Others Vs. Colonel G. S. Grewal* has observed which is reproduced as under:-

"24. If a Tribunal lacks jurisdiction then there is no question of proceeding with the matter in a given case taking umbrage under the façade of not treating it as a precedence. In a matter of jurisdiction, there are only two alternatives. Either the Tribunal has the jurisdiction or it has no jurisdiction. There is no third alternative to proceed with the matter with the statement that it will not be treated as precedent."

Hon'ble Supreme Court further observed :-

"26..... We may point out that merely because the respondent is subject to the Army Act would not by itself be sufficient to conclude that the Tribunal has the jurisdiction to deal with any case brought before it by such a person. It would depend upon the subject-matter which is brought before the Tribunal and the Tribunal is also required to determine as to whether such a subject-matter falls within the definition of "service matters", as contained in Section 3(o) of the AFT Act. In Major General S. B. Akali case, the Principal Bench primarily went by this consideration. The subject-matter was promotion to the rank of Lieutenant General and this promotion was governed by the Rules contained in the Policy of DRDO and not under the Army Act. Therefore, in the instant case, it is required to be examined as to whether the relief claimed is entirely within the domain of DGQA or for that matter the Ministry of Defence or it can still be treated as "service matter" under Section 3(o) of the AFT Act and two aspects are intertwined and inextricably mixed with each other. Such an exercise is to be taken on the basis of documents produced by both the sides. That has not been done. For this reason, we deem it proper to remit the case back to the Tribunal to decide the question of jurisdiction keeping in view these parameters."

Under Section 3(o) of the AFT Act, 2007 only service matters in relation to persons subject to Army Act, 1950, Navy Act, 1957 & Air Force Act, 1950 may be brought for adjudication before the Tribunal.

In view of the above, merely because of working in the Indian Air Force shall not make out a case to treat him as Armed Forces personnel. Accordingly, the application is not maintainable. Rejected with liberty to approach appropriate forum.

A plain copy of the order, duly countersigned by the Tribunal Officer be furnished to both sides after observance of usual formalities.

(LT GEN GAUTAM MOORTHY)
Member (Administrative)

(JUSTICE DEVI PRASAD SINGH)
Member (Judicial)