

**COURT NO. 3,
ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

**T.A. No. 436 of 2009
(Delhi High Court W.P (C) No. 2524 of 1996)**

IN THE MATTER OF:

Smt Balvinder Kaur

.....Applicant

Through T.K. Joseph, counsel for the applicant

Versus

Union of India and Others

.....Respondents

Through: Ms Jagrati Singh counsel for the respondents

CORAM:

**HON'BLE JUSTICE MANAK MOHTA, JUDICIAL MEMBER,
HON'BLE LT GEN Z.U.SHAH, ADMINISTRATIVE MEMBER**

Order

Date: 17-5-2010

1. The applicant had filed a writ petition (civil) No. 2524/1996 in the Hon'ble Delhi High Court. The same was transferred to the Armed Forces Tribunal on 22/09/2009. In the present application the

applicant has raised preliminary issue with regards to jurisdiction and filed an application dated 24/02/10 requesting that her case be returned to the Delhi High Court since the Armed Forces Tribunal has no jurisdiction over MNS officers.

2. We have heard both parties and perused the record. At the outset the applicant contends that the Armed Forces Tribunal (AFT) had no jurisdiction over the case as MNS officers are not included in Sub Section 2 (i) of the Army Act 1950. MNS officers are governed by the Indian Military Nursing Service Ordinance 1943 (Ordinance 1943). This prescribes that only for two offences, namely absence without leave and violation of good order and military discipline above are applicable to MNS officers. Rule 6 of the Ordinance 1943 generally re-iterates the punishments that can be imposed on MNS officers. Section 7 empowers the COAS to administratively dismiss MNS officers, unlike the case of the Army where dismissal of officers is vested to the Govt of India. The

conditions of service are governed by the Army Instructions 61/77 whereas Chapter IV of the Army Act prescribes the condition of service of Army personnel.

3. In support of his contentions that the AFT has no jurisdiction over MNS officers the learned counsel for the applicant has cited the case of WP (C) No 166/2010 and WP (C) No 6827/2009 pertaining to MNS officers wherein the Hon'ble Delhi High Court heard the cases and did not transfer them to AFT. The Hon'ble Supreme Court in case of "Jasbir Kaur Vs UOI & ORS" AIR 2004 SC 293 decided on 13/11/2003 had held that MNS "is a separate and distinct class".

4. The learned counsel further stated that the case of "Maj Gen Usha Sikdar Vs UOI & ORS" TA No 211 of 2010 decided on 30 Mar 2010 by Hon'ble Bench No 1 of AFT where the Hon'ble Bench No 1 of the AFT had heard the application pertaining to benefits and privileges pertaining to MNS officers and cannot be relied by the respondents as the question of jurisdiction was never raised before the Hon'ble AFT Bench No 1.

5. The applicant also cited the case of Maj Gen SB Akali TA No 221 of 2010 decided on 09 Apr 2010 by Hon'ble Bench No 1 of AFT and drew the ratio between army officers seconded to DRDO and MNS officers. In this case the AFT ruled that it had no jurisdiction in the cases of DRDO officers.

6. The applicant has requested that the law regarding jurisdiction raised be considered and the case remitted back to the Delhi High Court.

7. The respondents drew our attention to Para 9 of the "Indian Military Nursing Service Ordinance 1943" which states "the provisions of the Indian Army Act, 1911 shall to such extent and subject to such adaptations and modifications as may be prescribed, apply to members of the Indian Military Nursing Service as they apply to Indian Commissioned Officers, unless they are clearly inapplicable to women".

8. Para 3 of the Military Nursing Services (India) Rules states "the provisions of the Indian Army Act, 1911 shall apply to officers of the Nursing Services mentioned in Sub section (1) of section 9 of the

Ordinance, as if they were Indian Commissioned Officers and the provisions of the Army Act shall apply to officers of the Nursing Services mentioned in Sub section (2) of the said section, as if they were officers of the Regular Forces; and references in the said Acts to military ranks shall, in relation to the Nursing Services, be construed as references to the corresponding ranks laid down in the Regulations made under the Ordinance for officers of the Nursing Services”.

9. We have perused the records and heard the arguments at length. It is pointed out that the present application was transferred to the AFT on the request of the applicant herself. A reading of the “Indian Military Nursing Service Ordinance and Rules 1943” clearly indicates that the Army Act clearly applies to the MNS officers “unless they are clearly inapplicable to women”. The orders passed by the Hon’ble Bench No 1 of AFT on the application filed by Maj Gen Usha Sikdar has settled the matter of jurisdiction. The preliminary issue with regards to jurisdiction

raised by the applicant is decided accordingly and we hold that we have jurisdiction to hear the case on merit. The contentions in this respect of applicant are over ruled. The case be listed for final hearing. Applicant Miscellaneous application dated 24/02/2010 is hereby rejected.

MANAK MOHTA
(Judicial Member)

Z.U.SHAH
(Administrative Member)

Announced in the open court

Dated: 17-5-2010

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T.A. No. 436 OF 2009

W.P.(C) No.2524 of 1996 of Delhi High Court

IN THE MATTER OF :

Smt. Balvinder Kaur

.....Applicant

VERSUS

Union of India & Ors.

.....Respondents

Dated: 21-12-2010

Present: Mr. T.K. Joseph, counsel for the Applicant.
Ms. Jagrati Singh proxy for Mr. A.K. Bhardwaj, counsel for the Respondents.

Learned counsel for the applicant does not want to press this application and wants to withdraw the same. Learned counsel for the respondents has no objection to the same.

Considering his prayer, application stands dismissed as withdrawn. No orders as to costs.

Z.U. SHAH
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Dated: 21-12-2010