COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

17.

MA 2259/2024 IN OA 1214/2024

Ravi Tomar (Retd) ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. Manoj Kumar Gupta, Advocate
For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
27.05.2024

MA 2259/2024

For the averments made in this application, the prayer for early hearing is allowed.

2. The MA stands disposed of.

OA 1214/2024

3. The OA is taken on board and heard on the question of admission.

4. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as AFT Act, 2007), the applicant has filed this application and the prayer made in Para 8 reads as under:

"A. To consider minimum eligibility criteria including birth-marks of 08 cm length be FIT for enrollment as per standard procedure adopted for enrollment in the Army/Navy/Air-force and direct the Respondents to permit the Applicant to enroll in Indian Army with said birthmark for which he was declared unfit against the targeted vacancy; and/or

B. Summon all relevant documents prior to relieving the applicant from the respondent's Boys Sports Company which consequential benefits, and/or

C. To direct the respondents to enroll the applicant in Army under vacancy of ABSC through Agniveer Scheme specially earmarked for the applicant at the earliest by waiving age criterion (if any) as he participated in recruiting process well in time but declared Unfit for birth mark; and/or

D. Any other just and equitable order in the interest of justice may kindly be passed."

5. It is the grievance of the applicant that the respondents are not permitting him to participate in the recruitment/enrollment process as an Agniveer under the designated vacancy allotted for the sports candidate of the Army Boys Sports Company (ABSC) through Agniveer Scheme. The applicant was inducted into the ABSC to prepare him for sports and to consider his case for enrollment/appointment into the Army under the Agniveer Scheme. However, on account of certain medical issue the applicant's case is not being considered and, therefore, he has invoked the jurisdiction of this Tribunal.

6. When the matter was listed on 16.04.2024 for admission, learned counsel for the respondents raised

preliminarily objections to say that as the main issue in this case pertains to recruitment/enrollment/appointment into the Army, in view of the Full Bench judgment of this Tribunal in the case of ***Kaptan Singh*** Vs. ***Union of India and Ors.*** (OA 17/2015 decided on 28.05.2021), this Tribunal has no jurisdiction to deal with the matters pertaining to recruitment. It was the case of the respondents based on the aforesaid judgment of ***Kaptan Singh*** (supra) that under Section 2 of the AFT Act, 2007, the Act applies only to persons who are subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950 or to retired persons subject to these three Acts or their dependants who are claiming as legal heir and successors for the benefit of service matters. Service matters under Section 3(o) are defined as under:

> *"3. Definitions. —In this Act, unless the context otherwise requires, —*
>
> *xxx xxx*
>
> *(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."

7. It is the case of the respondents that after taking note of Section 2 and 3(o) of the AFT Act, 2007 in the case of ***Kaptan Singh*** (supra), in Para 34, 35 and 36 the Full Bench has crystallized the law in the following manner:

"34. Therefore, we have no hesitation in holding that as far as the present applicants are concerned, the disputes pertaining to their selection, which have been canvassed in these cases, are matters that fall beyond the jurisdiction of this Tribunal inasmuch as there were procedures followed at a stage which was before they became subject to the Army Act, Navy Act or the Air Force Act, as the case may be, and, therefore, any dispute pertaining to the recruitment/appointment at that stage is beyond our jurisdiction. The jurisdiction of this Tribunal would arise only if the 'service matters', as defined in Section 3(o) of the AFT Act, come into existence i.e. when a person has been subject to the Army Act, 1950, the Navy Act, 1957 or the Air Force Act, 1950, as the case may be, and, in our considered view, the learned Division Bench of the Allahabad High Court having decided the controversy as dealt with herein above, in categorical and specific terms, we have no hesitation in accepting and following the same. On the contrary, we may,

with great respect, state that the Hon'ble Rajasthan High Court, while deciding the case in Nathulal Gurjar (supra), did not consider various legal issues, particularly the principle of interpretation of Statutes and the Legislative intent and arrived at a conclusion based on an isolated reading of certain words in the definition which, in our considered view, does not lay down the correct law., with which we, with due respect, would disagree.

35. 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 under Section 14 of the AFT Act does not fall within the ambit of 'service matters' defined in Section 3(o) of the AFT Act. The reference is answered accordingly.

36. Having done so, normally the matters should have been sent back to the respective Regional Benches of the Tribunal for consideration on merits, but in these cases, we find that the only issue involved for the present is as to whether the applications were maintainable and as we have found that the preliminary issue raised by the learned counsel representing the Union of India is valid, we see no reason to keep the matters pending and remit the same back for consideration to the Regional Benches."

and in case as the applicant is seeking recruitment to the Army under the Agniveer Scheme and he is yet to be enrolled and as he is not subjected to the Army Act, the Navy Act or the Air Force Act, for the present this not a service matter and, therefore, this Tribunal has no jurisdiction to deal with the matter.

8. Learned counsel for the applicant took time when such objections were raised on 16.04.2024 and again on 26.04.2024. On 26.04.2024, the matter was adjourned to 12.08.2024, however, by filing an MA being MA

No.2259/2024 and by indicating the following facts in Para 2 of the MA:

> *"2. That Applicant is going to overage if not recruited in Army wherein he served already served as Boys service for considerable time and targated vacancy already issued, thus in terms of Para-30 of Kaptan Singh vs UoI (OA/17/2015), Lordship has observed and intent to confer jurisdiction over a person who refuse permission to join ever after following these procedures. (COPY OF ORDER WILL BE PROVIDED DURING ARGUMENT, IF REQUIRED)."*

early hearing of the matter is sought for. The MA has been allowed and the OA was heard on the question of admission. However, the submission made by the applicant as reproduced hereinabove in MA 2259/2024 is wholly misconceived and is contrary to the law laid down in the case of ***Kaptan Singh*** (supra).

9. Having heard learned counsel for the parties on the issue and having bestowed our anxious consideration into the law laid down by the Full Bench in the case of ***Kaptan Singh*** (supra) extracts of which have been reproduced by us hereinabove, we are of the considered view that the subject matter of issue involved in this is recruitment to the service of the Army and in the light of the detailed law laid down by the Full Bench in the case of ***Kaptan Singh*** (supra), at this stage in the matters of recruitments, this Tribunal does not have

jurisdiction in the matter as the applicant is yet to be made a person who is subjected to the Army Act of 1950.

10. That being so, finding lack of jurisdiction to deal with the subject matter in question and the same being beyond the purview of service matter as defined in Section 3(o) of the AFT Act, 2007, we dismiss this OA with liberty to the applicant to take re-course to the remedy available in accordance with law.

11. With the aforesaid, the OA stands disposed of.

12. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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