

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

2.

OA 18/2025

Mukesh Jhakar MCEAA (R) II Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Ajit Kakkar, Advocate
For Respondents : Dr. V.S. Mahndiyan, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER
15.01.2025

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant challenges the tenability of an order passed on 18.06.2024 in the matter of redressal of his grievance with regard to grant of a foreign assignment/posting/appointment in a foreign deputation.

The prayer made in Para 8 reads as under:

- (a) *To direct the respondents to provide the documents for deletion of applicant's name from the Foreign deputation.*
- (b) *To direct the respondents to allow the applicant for the next the foreign deputation.*
- (c) *To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.*

2. The respondents have raised a preliminary objection regarding the maintainability of this OA. They refer to the

definition of "service matter" as contained in Section 3(o) of the Armed Force Tribunal Act, 2007 and the exclusion clause contained in Part-(ii) which reads as under:

3(o) Service Matters, in relation to the persona subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Forces 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 matter relating to-

(i) Order 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 posting 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;

3. According to the respondents, in sum and substance, the claim of the applicant pertains to his posting or appointment on deputation to a foreign post. According to them, by virtue of the jurisdiction vested in this Tribunal and in view of the exclusion clause, as detailed hereinabove, the subject matter of the application is beyond the jurisdiction of this Tribunal.

4. Mr. Ajit Kakkar, learned counsel for the applicant vehemently opposes the same and argues that the applicant is aggrieved by non-inclusion of his name in the selection process for appointment to this assignment. He contends that since it is a post on deputation, it is neither a posting nor an appointment.

5. It is clear from the definition of "service matter" as contained in Section 3(o) and the exclusion clause mentioned hereinabove that the transfer or posting including the change of place or unit on posting of an individual is beyond the jurisdiction of this Tribunal. It is a well-known principle of service jurisprudence that deputation is a mode of appointment and posting of a person. It is an ancillary process to the recruitment process. Anything connected to or ancillary to posting, transfer, or appointment is beyond the jurisdiction of this Tribunal. The selection process for

selecting candidates for posting or appointment on deputation is an ancillary process to the process of posting on deputation. Therefore, we find much force in the objections raised by the respondents.

6. We conclude that this Tribunal lacks inherent jurisdiction to deal with the matter. The applicant, if so advised, may invoke the jurisdiction of an appropriate High Court by filing a writ petition seeking mandamus or prohibition with regard to his grievances.

7. In view of the above, we dispose of the matter without expressing any opinion on the merits of the claim made by the applicant.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[RASIKA CHAUBE]
MEMBER (A)