

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

OA 2589/2023

Ex FLT CDT AMAN KUMAR	Applicant
Versus		
Union of India & Ors.	Respondents

For Applicant	:	Mr. Ajit Kakkar, Advocate
For Respondents	:	Mr. Neeraj, Sr. CGSC with Rudra Paliwal, Advocate with Wg Cdr Gagan Sharma, Deputt Representative.

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act 2007, the applicant has filed this application calling into question the tenability of an order dated 03.06.2023 (Annexure A1), by which the applicant, who was a trainee cadet and had joined the Air Force Academy to undergo training in the Flying Branch, is aggrieved by the said order whereby he was discontinued from training. Seeking reinstatement of his cadetship in the Indian Air Force, the application has been filed. The reliefs sought by the applicant in Para 8 of the OA read as under:

(i) *Set aside/quash the impugned order dated 03.06.2023.*

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(ii) Direct the respondents to bring on record all the relevant documents pertaining to the Applicant (including his marksheets, reports, performance assessment etc).

(iii) Reinstate the applicant in (training) service in order to complete his training and further be commissioned in the IAF.

(iv) Alternatively, at least allow the applicant to complete his B. Tech degree which is incomplete as he is terminated in the eight semester.

(v) Grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper at any stage of the proceedings.

2. It is the case of the applicant that he joined the National Defence Academy on 25.12.2019 in the 143 Course in the Air Force (Flying) Branch under the B. Tech Stream. According to the applicant's own showing, his life in the NDA was not easy. He was required to put in extra efforts to pass various academic and physical training tests, and he could not clear many of the tests in his first attempt, but he still worked hard and cleared them in subsequent attempts. While the applicant was undergoing training in the 6th Semester and was subjected to pre-flying training, he completed 10 sorties on the Super Dimona Aircraft. He completed his training and course in the NDA, i.e., the basic military training, and joined the Air Force Academy, Dundigal on 23.12.2022 to undergo training in the Flying Branch. According to the material available on record, during this training, the applicant did not fare well, and it is the case of the

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applicant himself that he felt nervousness in the cockpit, his legs started trembling, and he conveyed this to his instructor. This disability/fear in his mind indicated that he was unable to perform flying duties and in fact, he communicated his unwillingness to undergo flying. As a result, records indicate that he was counselled, put through various processes of rehabilitation and finally, when he was unsuccessful in clearing the training despite various warnings and counselling administered to him after the fourth warning his matter was referred to the Training Review Board (TRB) for consideration. The documents available on record indicate that the applicant was unwilling to continue training, had significant attitudinal deficiencies and finding that he would not become a good trainee, his cadetship was terminated. Even though various averments have been made in the application, the applicant admits that he was unable to participate, come out successfully and failed to complete the flying training. He also admits that he was nervous, could not undertake the training, his reports regarding training were very poor and he specifically expressed his unwillingness to undertake training for flying and indicated that he was unable to cope with the flying exercises and training. Be that as it may, the fact remains that having been unsuccessful in completing his training and having voluntarily withdrawn from the training the applicant's

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cadetship and training were discontinued and he is now before this Tribunal challenging the action. Even though the applicant admits that he was unwilling to undergo flying training and did not want to become an aviator, he claims that he should have been adjusted in some alternate trade or skill and continued in Air Force service instead of being terminated.

3. The respondents have filed a detailed counter affidavit and have indicated various aspects, particularly the unsuccessful training performance of the applicant, his unwillingness to undergo training in flying, his poor performance in the training itself and that in spite of counselling and warnings given when he did not mend his ways the respondents submit that they terminated his cadetship. However, a preliminary objection has been raised by the respondents stating that as the applicant is only a trainee cadet and as he is not a fully commissioned or appointed officer of the Indian Air Force and as he is not subject to the provisions of the Air Force Act, this Tribunal does not have jurisdiction in the matter. Both the parties were heard on this issue, apart from being heard on the merits of the matter. As the preliminary issue with regard to the tenability of this application and the jurisdiction of this Tribunal to hear the matter goes to the root of the case, we propose to deal with the issue of jurisdiction.

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4. It is the case of the respondents that the applicant was a trainee cadet in the Air Force Academy, he was not commissioned into the Indian Air Force, and, at the time of termination of his training, he had not become subject to the Air Force Act within the meaning of Section 2 of the Air Force Act. It is the case of the respondents that under Section 2 of the Air Force Act, a person becomes subject to the aforesaid Act only if he is an officer or warrant officer of the Air Force or a person enrolled under this Act referring to Section 2 of the Air Force Act, 1950 which reads as under:

2. Persons subject to this Act.—The following persons shall be subject to this Act wherever they may be, namely:—

- (a) officers and warrant officers of the Air Force;*
- (b) persons enrolled under this Act;*
- (c) persons belonging to the Regular Air Force Reserve or the Air Defence Reserve or the Auxiliary Air Force, in the circumstances specified in section 26 of the Reserve and Auxiliary Air Forces Act, 1952 (62 of 1952);*
- (d) persons not otherwise subject to air force law, who, on active service, in camp, on the march, or at any frontier post specified by the Central Government by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of the Air Force.*

The respondents contend that the applicant does not fall in any of the categories stipulated in Clauses (a), (b), (c) and (d) of the Air Force Act and therefore as he is not subject to the Air Force Act,

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therefore, this Tribunal does not have any jurisdiction to deal with the matter. They refer to Section 2 of the Armed Forces Tribunal Act, 2007 and argue that the provisions of the AFT Act apply only to persons who are subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950, or to persons who are retired personnel under any of the aforesaid Acts, including a dependent heir or successor of a person subject to the Army, Air Force, or Navy Act, Section 2 of the Armed Forces Tribunal Act, 2007 reads as under:-

2. Applicability of the Act.—(1) The provisions of this Act shall apply to all 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).

(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) or the Air Force Act, 1950 (45 of 1950), including their dependants, heirs and successors, in so far as it relates to their service matters.

That apart, referring to Section 3(o) with regard to the definition of "service matter," it is argued that service matters within the jurisdiction of this Tribunal pertain to matters indicated in Section 3(o) in relation to a person who is subject to the Army Act, Navy Act, and Air Force Act. Accordingly, it is the case of the respondents that the applicant is not subject to the Army Act, Navy Act, or the Air Force Act, and, therefore, this Tribunal has no jurisdiction in the matter. The respondents argue that a Full Bench of this Tribunal had

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already considered this issue vide order passed on 28.05.2021 in the case of *Kaptan Singh v. Union of India and Others* (O.A. No. 17/2015), wherein it was held that matters pertaining to recruitment and matters pertaining to training, or anything done prior to a person being made subject to the Army Act, Navy Act, or Air Force Act, do not fall within the jurisdiction of this Tribunal. A detailed written submission has been filed in this regard, and by inviting our attention to Air Force Order 05/2016, i.e., "Procedure to Deal with Flight Candidate Trainee Officers," it was pointed out that this AFO lays down the procedure to be followed in the matter of training of Air Force cadets. Referring to the definition of a flight cadet as contained in Para 7 of this AFO, it is pointed out that an individual selected to undergo pre-commissioning training in any training institute of the Indian Air Force is not subject to the Air Force Act, 1950, but is only governed by AFO 5/2016. That apart, our attention is invited to a certificate issued vide Appendix D with reference to Para 52(h) of the AFO to say that, when a cadet is discharged, a certificate in the form appended to Appendix D is issued, which clearly shows that he is not an officer subject to the Air Force Act. Further, the respondents invite our attention to various orders passed by the Coordinate Benches of this Tribunal, by the Delhi High Court, and by a Division Bench of the Allahabad High

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Court in the case of *Union of India through Secretary and Others v. Kapil Kumar* (Special Appeal No. 833/2015), reported in MANU/UP/2042/2015, to contend that, in the case of a cadet or a recruit who is not subject to the Army Act, Navy Act, or Air Force Act, the provisions of the AFT Act are not applicable, and therefore the Tribunal has no jurisdiction. The learned counsel for the respondents in support of the aforesaid contention took us through the following judgments to argue that the application is not maintainable and is liable to be dismissed:

“Judgment of Hon’ble Armed Forces Tribunal, Regional Bench, Lucknow, in EX Cadet Shivam Gupta Vs. Union of India & Ors, No. 977 of 2023 dated 25.01.2024.

Judgment of the Hon’ble Armed Forces Tribunal, Regional Bench, Lucknow, in Abhishek Badoni (No. 38348/M/138 Army Cadet) Vs. Union of India & Ors. OA NO. 481 of 2021, dated 11.08.2023.

Judgment of the Hon’ble Armed Forces Tribunal Regional Bench, Chennai in Ex Cadet Yogesh R vs. Union of India & Ors., OA No. 29 of 2019 dated 25.08.2022.

Judgment of the Hon’ble Delhi High Court in EX FLIGHT CADET MOHIT BHANDARI Vs Union of India & ors in W. P. (C) 4306/2017”

5. However, the learned counsel for the applicant refuted the aforesaid and argued that the AFT Act, 2007, applies to the applicant. He refers to Clause (iv) of the inclusive clause in the definition of "service matter" under Section 3(a) and argues that the words “any other matters whatsoever” appearing in the said section

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are wide enough to include within their ambit any matter pertaining to the Armed Forces, and, therefore, it is said that this Tribunal has jurisdiction in the matter. Reliance in this regard is placed on a judgment rendered by the Division Bench of the Rajasthan High Court in the case of *Nathulal Gurjar v. Union of India and Others* (Single Bench Writ Petition No. 17054/2012) and the Division Bench judgment affirming the order of the Single Judge, wherein, referring to the words “definition of service matters” and the implication of the words “any other matters whatsoever,” an argument was made to say that this Tribunal has jurisdiction. That apart, learned counsel invites our attention to a proceeding held before the Hon’ble Division Bench of the Delhi High Court in the case of *Cadet Vikas Yadav v. Union of India* (W.P. (C) 3121/2022) and the order passed on 21.02.2022 to say that, in that case, in the matter of a cadet of the Naval Academy, the Union of India’s counsel accepted that the writ petition is not maintainable as it is a service matter under Section 3(o) and that the matter should go to the Armed Forces Tribunal. The learned counsel also invites our attention to another order of the Delhi High Court in *W.P. (C) No. 465/2023, Ex Rect Himanshu Davai v. Union of India and Others*, decided on 06.01.2023, to state that, in the matter of terminating the service of a recruit of the Indian Army, when this Tribunal

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refused to invoke jurisdiction and dismissed the application in light of the law laid down in the case of *Kaptan Singh* (supra), the Delhi High Court interfered, quashed the order of this Tribunal, and remanded the matter back to this Tribunal. Relying on these two judgments, the learned counsel argued that the Tribunal has jurisdiction in the matter and that the application is maintainable.

6. We have heard the learned counsel for the parties at length on the said issue. As a matter of fact, the issue has been extensively dealt with by a Full Bench of this Tribunal while considering about 20 applications filed by different applicants in the case of *Kaptan Singh* (supra), wherein the issue as to whether the provisions of the Armed Forces Tribunal Act would apply to recruits at the stage of recruitment or selection has been considered and decided, and in the judgment of the Full Bench, consideration of the law laid down by the Rajasthan High Court in the case of *Nathulal Gurjar* (supra) and the Allahabad High Court in the case of *Kapil Kumar* (supra) has been extensively dealt with and the issue decided.

7. Before advertng to consider the judgments in question, it would be appropriate to refer to Section 2 of the Armed Forces Tribunal Act, 2007, which clearly stipulates that the provisions of the AFT Act shall apply to all persons subject to the Army Act, 1950,

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the Navy Act, 1957, and the Air Force Act, 1950. Further, in the definition of “service matters” contained in Section 3(o), it is clearly stipulated that the service matters pertain to and are related to a person subject to the Army Act, Navy Act, and the Air Force Act. It is, therefore, clear that the provisions of the AFT Act, 2007, apply to persons who are subject to the Army Act, Navy Act, and the Air Force Act. As defined in Para 7 of AFO 5/2016, a flight cadet is selected to undergo pre-commissioning training in any training institute of the Indian Air Force, and he is not subject to the Air Force Act but is only governed by the AFO. It is only after he completes his training and is commissioned in accordance with the provisions of the Air Force Act, 1950, and the provisions contained in Chapter III, from Para 10 to 17, that he becomes a person subject to the Air Force Act. It is, therefore, clear that, to invoke the jurisdiction of this Tribunal under Section 14 or 15 of the AFT Act, 2007, an aggrieved person should be a person who is subject to the Air Force Act, Navy Act, or the Army Act. Without pondering upon various aspects of the matter, it is appropriate to take note of the law laid down by a Division Bench of the Allahabad High Court in the case of *Kapil Kumar* (supra). The decision of the Rajasthan High Court in the case of *Nathulal Gurjar* (supra) was delivered on 18.11.2025, and subsequently, the Allahabad High Court considered the matter in the case of *Kapil*

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Kumar (supra) on 24.11.2025. The Division Bench of the Allahabad High Court analysed the statutory provisions contained in Sections 2, 3(o), 14 and 15 of the AFT Act, 2007 and decided the matter in the following manner:

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 Armed Forces Tribunal Act 2007 specifies in Section 2 that its provisions shall apply to all persons 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 Acts including their dependents, heirs and successors insofar as they relate to their service matters. When the provisions to which we have made a reference earlier are read together, it is evident that in order for the Tribunal to have jurisdiction under Section 14, the dispute must relate to a service matter as defined in Section 3(o) of the Act. The basic requirement of being a service matter is that it must arise in relation to persons who are subject to the Army Act, 1950, the Air Force Act 1950 or the Navy Act 1957. (emphasis added).

Further, the Allahabad High Court took note of the provisions of Section 3 of the AFT Act and after referring to a judgment of the Hon'ble Supreme Court in the case of *Union of India v. Col. G.S. Grewal* (AIR 2014 SC 3494), held that merely because a person is subject to the Army Act, the AFT will not be vested with jurisdiction unless the subject matter also constitutes a “service matter” within the meaning of Section 3(o) of the AFT Act. That being so, the twin tests for invoking the jurisdiction of this Tribunal are that: (i) a

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person invoking the jurisdiction of this Tribunal should be a person subject to the Army Act, and (ii) the dispute sponsored by him has to be a service matter as defined under Section 3(o). All these aspects have been elaborately dealt with by the Full Bench of this Tribunal and, after detailed discussion in Paragraphs 34 and 35 of the judgment in the case of *Kaptan Singh* (supra), the issue has been decided 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*

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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.

8. The principle canvassed hereinabove has been consistently followed by this Tribunal in the following cases:

"Judgment of Hon'ble Armed Forces Tribunal, Regional Bench, Lucknow, in EX Cadet Shivam Gupta Vs. Union of India & Ors, No. 977 of 2023 dated 25.01.2024.

Judgment of the Hon'ble Armed Forces Tribunal, Regional Bench, Lucknow, in Abhishek Badoni (No. 38348/M/138 Army Cadet) Vs. Union of India & Ors. OA NO. 481 of 2021, dated 11.08.2023.

Judgment of the Hon'ble Armed Forces Tribunal Regional Bench, Chennai in Ex Cadet Yogesh R vs. Union of India & Ors., OA No. 29 of 2019 dated 25.08.2022.

Judgment of the Hon'ble Delhi High Court in EX FLIGHT CADET MOHIT BHANDARI Vs Union of India & ors in W. P. (C) 4306/2017"

9. This being the consistent position, we have no hesitation in accepting the objections raised by the respondents. As far as reliance placed by the learned counsel for the respondents on the case of

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Cadet Vikas Yadav (supra) is concerned, the same does not lay down any law. It does not refer to the judgments of the Allahabad High Court in the case of *Kapil Kumar* (supra) nor the Full Bench decision of this Tribunal in the case of *Kaptan Singh* (supra), but merely, on the admission made by the counsel for the Union of India, the petition was withdrawn with liberty to invoke the jurisdiction of this Tribunal. A concession made contrary to law cannot be cited as a precedent.

10. As far as the law laid down in the case of *Master Manu Kapoor* (supra) is concerned, even though this Tribunal held that, in the light of the law laid down in the case of *Kaptan Singh* (supra), the application was not maintainable, when the matter was considered by the Delhi High Court, it was found by the Delhi High Court in the case of *Recruit Himanshu Tewtia* (supra) that, in the said case, the applicant before this Tribunal, *Himanshu Tewtia* (supra), was aggrieved by the order passed terminating his service under Rule 13(3)(4) of the Army Rules, 1954. It was held in Para 11 of the said judgment that, when a candidate enrolled in the Army is provided an Army number and action against him is taken in accordance with the provisions of the Army Rules, which are rules formulated by virtue of the powers available under the Army Act,

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the Army Act would apply in such a case, and, therefore, the Tribunal would have jurisdiction.

11. The facts of the said case and the impugned action taken being within the provisions of the Army Act and the Rules framed thereunder the said judgment will not apply to the facts of the present case. On the contrary the law laid down by the Full Bench of this Tribunal will squarely apply and the issue in question is squarely covered by the judgment of the Division Bench of the Allahabad High Court. Therefore, upholding the objection raised by the respondents we dismiss this application as not maintainable and beyond the jurisdiction of this Tribunal and therefore we grant liberty to the applicant to take recourse to such remedy as may be available in law.

12. We may observe that certain references made to the performance of the applicant at the time of training and the reasons for terminating his training are only referred to highlight the facts of the case. The same is not any finding nor can the said findings be used against the applicant in any manner whatsoever, as we have not entered into the merits of the matter for want of jurisdiction.

13. Accordingly, the application stands disposed of with the aforesaid observations and liberty to the applicant to redress his

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grievance in accordance with law before a forum or a Court which has jurisdiction in the matter.

14. No order as to costs.

15. Pronounced in open Court on this the 13th day of August 2025.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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