

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

(Through Video Conferencing)

OA No.272 of 2018

Thursday, the 12th day of August, 2021

CORAM :

**HON'BLE MR.JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN BOBBY CHERIAN MATHEWS, MEMBER (A)**

Banty Sarkar, aged 19 years,
s/o Ex Nb Sub Chandranath Sarkar,
Parbatipur Bazarpara, Pratinagar Post,
Nadia district, West Bengal 741 247

Vs

UoI & Others

For Applicant : Shri VK Vijayakumaran, Advocate

For Respondents : Shri M.Vijayakanth, CGSC

ORDER

1. This Application pertains to alleged procedural lacunae and shortcomings in the conduct of Recruitment Rally/Examination held at 1 EME Centre, Secunderabad on 26.08.2018 and the Applicant seeks annulment of the Result dated 07 Sep 2018.

2. The Applicant is the son of a retired JCO and has sought redressal for being denied enrolment due to shortcomings in the enrolment process carried out in the Recruitment Rally held at 1 EME Centre, Secunderabad on 26 Aug 2018. He has sought relief from the Armed Forces Tribunal (AFT) on the premise that the Jurisdiction of the AFT also applies to

retired personnel subject to the Army Act, Navy Act and Air Force Act including their dependents, heirs and successors in so far as it relates to the service matters.

3. The Learned Counsel for the Respondents has rebutted all the allegations and averments made by the Applicant.

4. Without going into the merits of the case, it would be pertinent to first determine whether a case of an individual who has not qualified in a Recruitment Process for enrolment in the Indian Army would fall within the purview and ambit of the AFT.

5. The Armed Forces Tribunal Act 2007 is explicit on the Applicability as defined in Section 2 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"

6. The definition of service matters has also been clearly defined in Section 3(o) of the Armed Forces Tribunal Act, 2007

"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. The issue of service matters and jurisdiction of the AFT has been very clearly defined by a Division Bench of the Allahabad High Court in the case of Union of India and Others Vs Kapil Kumar (Special Appeal No.833 of 2015 (MANU/UP/2042/2015))

*"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.**"*

8. That issues pertaining to recruitment prior to a person being enrolled in the Armed Forces do not come under the jurisdiction of the AFT has further been explicitly clarified by a Three Member Bench of the AFT Principal Bench order in the case of *Kaptan Singh Vs Union of India & Ors and 17 other Applicants* (OA 17/2015 -RB, Jaipur) vide their Order dated 28 May 2021.

“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 ACT Act. The reference is answered accordingly.”

9. In-fine, a bare reading of Section 2 and Section 3(o) of the AFT Act 2007 read in conjunction with the Allahabad High Court Judgement referred in Para 7 and AFT Principal Bench Order referred in Para 8 above, it is crystal clear that the issue being considered lies outside the purview of the AFT. The Applicant is at liberty to seek remedial recourse as may be available in accordance with law to ventilate his grievances with regard to the impugned action.

10 The case stands Disposed Off accordingly.

11. No order on costs.

Sd/--
(RAJENDRA MENON)
CHAIRPERSON

Sd/--
(BOBBY CHERIAN MATHEWS)
MEMBER (A)

vp/-