

Form No. 4
{See rule 11(1)}
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI

1. O.A. No.166 of 2021

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| Capt Ashutosh Kumr Singh By Legal Practitioner for the Applicant | Versus | Applicant |
| Union of India & Others By Legal Practitioner for Respondents | | Respondents |

| Notes of the Registry | Orders of the Tribunal |
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| | <p><u>06.06.2022</u></p> <p><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>Heard Shri H.S. Verma, Ld. Counsel for the applicant and Shri A.J. Mishra, Ld. Counsel for the respondents.</p> <p>This Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-</p> <p>(i) <i>That this application be admitted.</i></p> <p>(ii) <i>That the respondents be directed to grant Inter Arm/Service transfer to ASC (Army Service Corps) and stop initiation of any action on discharge of the applicant from service.</i></p> <p>(iii) <i>That the respondents be directed to issue Battle Casualty Certificate and grant medical and service waiver for BYO-155 course.</i></p> <p>(iv) <i>To pass such other and further orders as may be deemed necessary in the interest of justice."</i></p> <p>Brief facts of the case are that applicant was commissioned in the Army on 11.03.2017. The applicant sustained injury of PIVD (C4-C5) on 15.04.2019 in J&K while descending down the vertical rope during training of Ghatak Platoon. He got injured on shoulder and cervical neck region. The applicant underwent Anterior Cervical Discectomy (C4-C5) (PEEK CAGE WITH BONE GRAFT) surgery at Command Hospital, Udhampur. Thereafter, applicant lost consciousness on 31.08.2019 and was diagnosed with Focal Seizure with Secondary Generalization. The applicant was placed in permanent low medical category, P2 (P) for PIVD (C4-C5) (OPTD) and P3 (P) for FOCAL SEIZURE WITH SECONDARY GENERALIZATION. The applicant could not qualify Platoon Weapon (Pl Wpn) leg, a part of Basic Young Officers (BYO) course due to injury sustained by him in the course and was returned to unit. The applicant was detailed for Pl Wpn leg on various occasions but owing to his medical condition and employability restriction, he could not attend the course. Being aggrieved, the applicant has filed present O.A. to grant medical and service waiver to undergo BYO course enabling him to qualify Pl Wpn leg and complete BYO.</p> |

Today, during the course of hearing, an objection has been raised by the learned counsel for the respondents inter alia on the ground that matter pertaining to transfer/posting (Inter Arm Service Transfer to Army Service Corps) is not included in purview of 'service matters' defined in Section 3(o) (iv), sub-section (ii) of the Armed Forces Tribunal Act, 2007. The application of the applicant for inter Arm transfer was returned by AMS, HQ Southern Command, Pune stating that only officers holding permanent regular commission are eligible for IAST and Short Service Commissioned officers are not eligible for Inter Arm Service Transfer (IAST). He further submits that an application in regard to service matters is maintainable in Armed Forces Tribunal only if it is included in definition of service matters given in Section 3(o) of the Act not otherwise. He further submits that transfer/posting case being excluded from the definition of service matters, therefore, application filed against the same is not maintainable in the Tribunal.

In support of aforesaid submission, learned counsel has placed reliance on the judgment of Armed Forces Tribunal (Principal Bench), New Delhi in O.A. No. 665 of 2020 in the matter of **Dfr Shatrughan Singh Tomar vs. Union of India and Ors**, decided on 07.04.2021. He pleaded that matter of transfer/posting is excluded from the definition of service matters in Section 3(o) (iv), sub-section (ii) of the Armed Forces Tribunal Act, 2007, therefore, present O.A. is barred by maintainability and as such is liable to be dismissed.

Learned counsel for the applicant further submits that applicant sustained injury in J&K while doing vertical rope exercise in the field. The applicant was not allowed to take proper treatment in Military Hospital and was sent on leave, forcefully. The applicant was placed in low medical category for his two disabilities **PIVD (C4-C5) (OPTD)** and **FOCAL SEIZURE WITH SECONDARY GENERALIZATION**. The applicant approached the respondents for issue of Battle Casualty Certificate based on all evidences and documents which was sustained during battle training exercise but the same has not been issued to him. The applicant applied for Inter Arm/Service Transfer to Army Service Corps as per IHQ of MOD (Army) policy dated 16.10.2019 which has also been rejected by the respondents without considering his injury/medical condition. He pleaded for issuance of Battle Casualty Certificate and medical and service waiver to complete BYO course and also to transfer him to ASC.

The "service matters" as defined in Section 3(o) of the Armed Forces Tribunal Act, 2007, in so far as it is relevant for the instant case, is reproduced as under :-

"3(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,

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| | <p>probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions;</p> <p>(iii) summary disposal and trials where the punishment of dismissal is awarded;</p> <p>(iv) Any other matter, whatsoever,</p> <p>but shall not include matters relating to –</p> <p>(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</p> <p>(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 of the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950).</p> <p>(iii) leave of any kind;</p> <p>(iv) Summary Court Martial except where the punishment is of dismissal or imprisonment for more than three months;”</p> <p>We find that though, the injury sustained by the applicant in operational area was attributable to military service but it was sustained during training of Ghatak Platoon while descending down the vertical rope, hence, it cannot be treated as battle casualty and therefore, battle casualty certificate cannot be issued to the applicant being a physical casualty.</p> <p>We also find that matter of transfer/posting is excluded in definition of service matters of the Section 3(o) (iv), sub section (ii) of the Act and the same is not cognizable by the Tribunal. Therefore, we are of the view that transfer/posting case being excluded from the definition of service matters defined in Section 3(o) (iv), sub-section (ii) of the Armed Forces Tribunal Act, 2007, does not fall within the purview of ‘service matters’ and therefore, the same is not cognisable in Armed Forces Tribunal.</p> <p>In view of the above, the O.A. is devoid of merit and deserves to be dismissed. It is accordingly dismissed.</p> <p>No order as to costs.</p> <p>Pending applications, if any, are disposed of accordingly.</p> <div style="display: flex; justify-content: space-between; align-items: center;"> <div style="text-align: center;"> <p>Sd/-</p> <p>(Vice Admiral Abhay Raghunath Karve) Member (A)</p> </div> <div style="text-align: center;"> <p>Sd/-</p> <p>(Justice Umesh Chandra Srivastava) Member (J)</p> </div> </div> <p>SB</p> |
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