

(2020) 11 AFT CK 0005

In the Armed Forces Tribunal

Case No : Original Application No. 1509 Of 2019

Birsai Oraon

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 11-11-2020

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14

Armed Forces Tribunal (Procedure) Rules, 2008 — Rule 6, 6(1), 6(2)

Citation : (2020) 11 AFT CK 0005

Hon'ble Judges : Rajendra Menon, J; P.M. Hariz, Member (A)

Bench : Division Bench

Advocate : U.S. Maurya, Karan Singh Bhati

Final Decision : Disposed Of

Judgement

1. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has called in question the Show

Cause Notice issued to him and the subsequent discharge order dated 23.09.2019 (Annexure A-1), whereby he has been discharged from service

(DSC) on account of the fact that he has been categorised as a person belonging to low Medical Category' and as there is no shelter appointment, the

impugned action has been taken.

2. While the matter was taken up on 21.10.2020, Gp Capt Karan Singh Bhati, learned Senior Central Government Standing Counsel, raised an

objection with regard to the territorial jurisdiction to deal with the matter on the ground that the applicant was discharged from service by virtue of the

order passed by the Competent Authority, namely, The Commandant & OIC, DSC Centre & Records, Kannur, Kerala C/o 56, APO, namely,

Respondent No. 3, which is within the territorial jurisdiction of the Regional

Bench at Kochi in Kerala. That apart, it has been stated that, after his discharge, on account of the applicant's own showing, he is now living in his village in District Gumla in the State of Jharkhand. It is stated that in accordance with the requirement of Rule 6 of the Armed Forces Tribunal (Procedure) Rules, 2008 (hereinafter referred to as 'Procedure Rules'), the application has to be filed either at the place where the applicant was last posted or where he resides now after his discharge or where the cause of action, in part or full, arose. It was argued by Shri Bhati that none of the aforesaid eventualities occurred within the jurisdiction of this Bench and, therefore, the application cannot be filed in the Principal Bench. He further submits that the applicant should either approach the Regional Bench at Kolkata or at Kochi.

3. Notice was given to the applicant and his counsel with regard to the aforesaid objection and the learned counsel for the applicant invited our attention to the Policy/Guidelines incorporating the terms and conditions of service for discharge of DSC (GD), Pers (Annexure A-2) dated 20.11.2018 issued by the Deputy Directorate General DSC, GS Branch, New Delhi to say that, as the action has been taken to discharge the applicant based on these guidelines and policy(s), a part of cause of action, as contemplated under Rule 6(2) of the Procedure Rules arose within the territorial jurisdiction of the Principal Bench at New Delhi and, therefore, this Bench has jurisdiction in this matter.

4. In our considered view, under Rule 6, the application has to be filed ordinarily with the Registrar of the Bench within whose jurisdiction the applicant is posted when the cause of action arose or was last posted or attached to, which admittedly was in the State of Kerala. Clause (ii) of Sub â?"Rule (1) of Rule 6 contemplates filing of an application at a place where the cause of action, wholly or in part, has arisen. In this case, cause of action is the illegal discharge of the applicant and the action of the Controlling Authority, Respondent No. 3, in not granting him shelter appointment. The impugned action vide Annexure A-1 dated 23.09.2019 is taken by the Competent Authority and merely because there are guidelines and policies issued by the authorities at New Delhi, general in nature, in the matter of the procedure being following for discharge of such persons, it cannot be said that the cause of action, wholly or in part, actually arose within the jurisdiction of this

Bench of the Tribunal. The cause of action arose where the impugned order or action was taken and, according to the provisions of sub-Rule (2) of Rule 6, the applicant, after discharge will have a right to invoke the jurisdiction of the Bench within whose territorial jurisdiction, he is ordinarily residing after his discharge i.e. the Regional Bench at Kolkata, which has jurisdiction to deal with the cases from the State of Jharkhand.

5. Taking note of all the statutory provisions and objections raised, we are of the considered view that the Principal Bench at New Delhi does not have jurisdiction to deal with the matter. The applicant should file the application before the appropriate Bench which has jurisdiction to deal with the case.

6. With the aforesaid liberty, the application stands disposed of.