

(2021) 01 RAJ CK 0211
In the Rajasthan High Court
Case No : Civil Writ Petition No. 554 Of 2021

Jhabar Rayal

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 19-01-2021

Acts Referred:

Armed Forces Act, 2007 — Section 3(o)(ii)
Constitution Of India, 1950 — Article 32, 226

Citation : (2021) 01 RAJ CK 0211

Hon'ble Judges : Sanjeev Prakash Sharma, J

Bench : Single Bench

Advocate : Yogendra Singh

Final Decision : Dismissed

Judgement

The selection for the post of Soldier is under the Army Act and therefore, the Armed Forces Tribunal ("AFT") would have jurisdiction to examine the matters relating to selection/recruitment.

This court has taken a similar view in the case of Manwinder Singh Rajawat Vs. Union of India & Anr., SB Civil Writ Petition No.10478/2020,

decided vide order dated 07.01.2021. After considering the judgment passed by this court in the case of Nathulal Gurjar Vs. Union of India, reported

in 2014 (2) WLC 244, the Court observed as under:-

11. Section 2 of the Act of 1950 has been referred to show as to who are the persons subject to Act of 1950 and if substance of the provision is

looked into, it means those, who are enrolled or appointed apart from commission officers. If, that is so, then what is the significance of Section 3(o)(ii)

of the Act of 2007 where the word "appointment" has been used. Section 10 of the Act of 1950 is relevant where subject matter of the Act of 1950, is

given. There president may grant commission to an officer or appoint any person as a warrant officer. If that is so, the Act of 1950 covers the matter

of appointment, which is to be given by the president. Section 11 provides about ineligibility of aliens for enrollment and Section 13 -of the Act of 1950

provides procedure before enrolling officers. Section 14 of the Act of 1950 provides mode of enrollment. Conjoint reading of the Act of 1950 along

with Section 3(o)(ii) of the Act of 2007 makes it clear that controversy in regard to appointment is nothing but under the Act of 1950 and if, that is the

position, jurisdiction to resolve the dispute pertaining to appointment lies in' the jurisdiction of AFT. The purpose and object for enactment of the Act of

2007 was to take away, all the service matters relating to Army, Navy and Air Force from the jurisdiction of the High Court and to be brought before

the Tribunal. If any matter relating to appointment in Army is excluded from the jurisdiction of AFT then would be against the object of the enactment.

12. Taking note of the aforesaid, I am unable to accept the arguments of learned counsel for the petitioner/s so as to exercise jurisdiction of this Court

in relation to matter of appointment. The jurisdiction lies with the AFT and otherwise petitioners are not remedy-less, inasmuch as, if the jurisdiction

does not lie to this Court, grievance of petitioners would be redressed by the Tribunal where jurisdiction exists.

13. Accordingly, both the writ petitions are ordered to be transferred to the Armed Forces Tribunal and be treated as disposed of from this Court.

The view of this Court is also affirmed in view of the judgment passed by the Supreme Court in case of Union of India and ors. Vs. Major General

Shri Kant Sharma and Anr. reported in 2015(6) SCC 773 wherein the Supreme Court held as under:

36. The aforesaid decisions rendered by this Court can be summarised as follows:

(i)The power of judicial review vested in the High Court under Article 226 is one of the basic essential features of the Constitution and any legislation

including Armed Forces Act, 2007 cannot override or curtail jurisdiction of the High Court under Article 226 of the Constitution of India.(Refer: L.

Chandra and S.N. Mukherjee).

(ii)The jurisdiction of the High Court under Article 226 and this Court under Article 32 though cannot be circumscribed by the provisions of any

enactment, they will certainly have due regard to the legislative intent evidenced

by the provisions of the Acts and would exercise their jurisdiction consistent with the provisions of the Act.(Refer: Mafatlal Industries Ltd.).

(iii)When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

(Refer: Nivedita Sharma).

(iv)The High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved

person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance. (Refer: Nivedita

Sharma).

Keeping in view the above, the writ petition is dismissed with liberty to approach the appropriate Armed Forces Tribunal for the purpose.