

(2020) 07 DEL CK 0098

In the Delhi High Court

Case No : Civil Writ Petition No. 4275 Of 2020

Lt. Col. Manish Narayan

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 17-07-2020

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Armed Forces Tribunal Act, 2007 — Section 3(o), 14(1), 14(2)

Citation : (2020) 07 DEL CK 0098

Hon'ble Judges : Rajiv Sahai Endlaw, J;Asha Menon, J

Bench : Division Bench

Advocate : Amit Kumar Pathak Yash Kotak, Vinod Diwakar

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J

C.M. Appl. No.15386/2020 (Exemption from filing certified copies, true typed copies and true translated copies with proper margins of the annexures)

1. Allowed, subject to just exceptions and as per the extant rules.

2. The application is disposed of.

W.P. (C) 4275/2020 and C.M. Appl. No.15385/2020 (for interim relief)

3. The petitioner, a Lieutenant Colonel with the Indian Army, presently posted at Training Battalion "I, Bombay Engineering Group and Center,

Pune and currently attached with Headquarters, Uttar Bharat Area, has filed this petition impugning the non-inclusion of his name in the letter dated

10th July, 2020 and seeking a mandamus, directing the respondents Union of India (UOI), to allow the petitioner to appear for the course for which the

petitioner had applied for and was selected and allow for the posting of the same.

4. We have heard the counsel for the petitioner at length.

5. It is inter alia the case of the petitioner in the petition, that

(i) the respondents, vide letter dated 28th November, 2019, invited applications for M.Tech Structures-09 course at CME, Pune for the year 2020-

2022; (ii) the petitioner, with a desire to contribute to the organization with greater experience and education, decided to pursue the M.Tech course

under the Post-Graduation Training (PGT) scheme offered by the respondents; (iii) the application dated 29th February, 2020 of the petitioner was

recommended by the Commandant of the Head-Quarters Bombay Engineering Group and Centre and was forwarded; (iv) the respondents, vide letter

dated 20th April, 2020 issued a list of successful officers to be called for viva-voce and the name of the petitioner was shown amongst the selected

candidates for the M.Tech Structures-09 course; (v) the College of Military Engineering Pune, vide letter dated 8th May, 2020 informed the Bombay

Engineering Group and Centre, where the petitioner was posted, of the schedule of viva-voce and the petitioner was permitted to undertake the viva-

voce examination; (vi) subsequently, on 2nd June, 2020, a list of selected officers was released and the name of the petitioner was included therein;

(vii) the course was to tentatively start on 13th July, 2020 and thus the respective branches where the selected candidates were then posted, were

requested to issue relevant posting orders, to enable the selected candidates to be posted at CME Pune; (viii) however, before posting order qua the

petitioner could be issued, the petitioner, vide order dated 6th July, 2020 issued by the Discipline and Vigilance Branch along with the order dated 9th

July, 2020, issued by the Training Battalion, Pune, was attached with Head-Quarters Uttar Bharat Area; (ix) that the Court of Inquiry against the

petitioner is already challenged and the matter is sub-judice before the Armed Forces Tribunal, New Delhi (AFT) vide O.A. No.31/2020; (x) the

petitioner has also approached the AFT with Miscellaneous Application, for quashing of the attachment order; and, (xi) despite being selected for the

course, the petitioner is not being permitted to be posted at Pune, to undertake the M.Tech Structures-09 course.

6. The counsel for the petitioner, being conscious that a question would arise before this Court qua the jurisdiction of this Court, in view of the Armed

Forces Tribunal Act, 2007, has in the petition itself contended that as per Section 3(o) of the said Act, the AFT does not have jurisdiction over

transfers and postings. The same argument is repeated before us. Besides the said argument, the only other argument is that the petitioner, after

having been permitted to participate in the selection process for the M.Tech Structures-09 course and after having been selected therein, cannot be

deprived of his right of further education, to further his career.

7. The impugned letter dated 10th July 2020 has been issued by Integrated Headquarters of Ministry of Defence (Army), to each of the six

Commands and to other Units, of detailment of officers, who have been selected for M.Tech course, and whose list is enclosed to the letter, at CME

Pune. The name of the petitioner does not find mention in the list of selected candidates who, vide the said letter, have been posted at Pune, to

undergo the course. The reason therefor is obvious. The petitioner, vide earlier order dated 6th July 2020, had already been attached with

Headquarter, Uttar Bharat area till finalization of disciplinary case pending against him and thus he could not have been posted to CME Pune.

8. We have still enquired from the counsel for the petitioner, whether, till the said attachment order remains, attaching the petitioner to Head-Quarters

Uttar Bharat Area, it is possible for the petitioner to be posted at CME Pune, to undertake the course.

9. The counsel for the petitioner answers in the negative.

10. Thus, the grievance if any of the petitioner ought to be against the attachment order dated 6th July 2020, and owing where to his name has not been

included in the detailment order dated 10th July 2020 and not against the detailment order dated 10th July 2020, impugning which this petition has been

filed. The petitioner however has not challenged the attachment order dated 6th July 2020 in this petition. Also, till the attachment order dated 6th July

2020 exists, no mandamus as sought, can be issued.

11. On the contrary, the challenge to the attachment order dated 6th July 2020 is pleaded to have been already made before the AFT in the OA filed

by the petitioner and pending before the AFT, with respect to the findings of the Court of Inquiry against the petitioner.

12. Not only so, the petitioner has sought to exclude the jurisdiction of the AFT and invoke the jurisdiction of this court, by before this court, calling the

attachment order dated 6th July 2020, as a posting order and by contending that AFT does not have the jurisdiction over transfers and postings. The

order dated 6th July 2020, cannot be both, an attachment order as well as a posting order and challengeable, both before the AFT as well as before

this court.

13. Section 14 (1) of the Armed Forces Tribunal Act vests jurisdiction in the AFT, to exercise all the jurisdiction, powers and authorities exercisable

prior to coming into force of the Act, by the Courts (except the Supreme Court or a High Court exercising jurisdiction under Articles 226 and 227 of

the Constitution) in relation to all service matters. Section 14(2) provides that a person aggrieved by an order pertaining to any service matter may

make an application to the AFT. â??Service matterâ? is defined in Section 3(o) of the Act, to which attention was invited by the counsel for the

petitioner also, and which lays down the same to mean, all matters relating to conditions of service but not including matters related to transfers and

postings. The same forms the fulcrum of invocation of the jurisdiction of this Court by the counsel for the petitioner.

14. We have enquired from the counsel for the petitioner, what is the difference between posting and attachment. The petitioner has not been posted

at Head-Quarters Uttar Bharat Area, but has been attached with Head-Quarters Uttar Bharat Area, till finalization of disciplinary case pending

against him.

15. The counsel for the petitioner is unable to answer.

16. Major Arjun Singh Katoch accompanying the counsel for the respondents, states that attachment orders are issued pursuant to Army Instructions

30 of 1986 and are only for the purpose of disciplinary action and are different from postings.

17. The aforesaid makes the position clear. The attachment order dated 6th July 2020, impeding the petitioner from undertaking the M.Tech course,

indeed, is relating to a service matter and the jurisdiction with respect thereto is of the AFT and which has already been invoked. The petitioner cannot

seek a relief from this Court, contrary to the attachment order. The petitioner is found to be abusing the process of the court

18. The petitioner himself having impugned the attachment order dated 6th July 2020, before the AFT, treating it as a service matter, we need not

proceed to adjudicate the difference between an order of attachment and an order of posting or to determine, whether the order dated 6th July 2020 is

an order of attachment or of posting.

19. The counsel for the petitioner contends that the petitioner was permitted to apply for M.Tech course by forwarding his application and was also

permitted to appear for viva-voce examination for admission to M.Tech course. It is also argued that once the petitioner has been admitted/selected,

he cannot be prevented from undertaking the M.Tech course.

20. We have enquired from the counsel for the petitioner, whether not permission to apply for admission and to appear in the examination for

admission is different from permission to undertake the course. Similarly, â??selectionâ?? in the M.Tech Structures-09 course is distinct from being

â??permittedâ?? by the respondents to undertake the course. Merely because an officer of the Army has been permitted to apply for admission into

an educational course and in pursuance of the said permission, has been selected for admission in the course, does not entitle the officer to permission

to undertake the course. There is a distinction between permission to apply for admission and to participate in the admission process and permission to

undertake the course.

21. The counsel for the petitioner has not been able to controvert the aforesaid.

22. We may notice that the communication dated 28th November, 2019, inviting applications from eligible officers willing to undergo the M.Tech

Structures-09 course, itself inter alia provided that the applicants will confirm that they are not involved in any disciplinary/vigilance/Summary of

Evidence (SOE)/Court of Inquiry (COI) cases or Departmental Inquiry. The petitioner was thus fully aware of the said condition, but nevertheless

proceeded to apply.

23. The counsel for the petitioner has drawn our attention to the â??Non-Involvement Certificateâ? dated 29th February, 2020, issued to the petitioner

to enable the petitioner to apply. However, a perusal of the said certificate, at page 80 of the paper-book, shows the said certificate to be to the effect

that there was nothing adverse and no disciplinary, vigilance or criminal case pending against the petitioner and the petitioner was not involved in any

Court of Inquiry or Summary of Evidence or Departmental Inquiry as on date; however attention was drawn to the letter dated 17th December, 2019.

The petitioner has not placed the letter dated 17th December, 2019 before us, though it was stated to be enclosed to the certificate. Major Arjun Singh

Katoch accompanying the counsel for the respondents appearing on advance notice, on enquiry states that the Court of Inquiry against the petitioner

was initiated in 2018 and the findings have been returned on 29th April, 2020, i.e., after 29th February, 2020. It appears that the letter dated 17th

December 2019 must be with reference to the Court of Inquiry against the petitioner.

24. The impugned letter dated 10th July, 2020 also, with respect to detailment of officers for M.Tech Structures-09 course, in Clause 3 thereof

provides that the officer will not be allowed to proceed on the course in case the officer is involved in any disciplinary case where a prima facie case

is established against the officer involved in the disciplinary case. The petitioner therefrom also was aware of the condition that he would not be

entitled to proceed for the course if there was any disciplinary action.

25. The counsel for the respondents states that there are serious findings against the petitioner by the Court of Inquiry and which are subject matter of

challenge before the AFT and the petitioner has thus been attached to the Disciplinary and Vigilance Cell, Head Quarters Uttar Bharat Area.

26. The counsel for the petitioner seeks adjournment.

27. No ground for adjourning the hearing is made out.

28. However, on request of the counsel for the petitioner, who is young, we delete the observation hereinabove, of the petitioner having abused the process of the court.

29. The petition is thoroughly misconceived and is dismissed.