

(2023) 07 BOM CK 0080

In the Bombay High Court

Case No : Writ Petition No.9407 Of 2023

LT.Col. Anjan Kumar Sinha

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 28-07-2023

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Armed Forces Tribunal Act, 2007 — Section 3(o), 3(o)(ii), 14, 14(2)
Army Act, 1950 — Section 18
Navy Act, 1957 — Section 15(1)
Air Force Act, 1950 — Section 18

Citation : (2023) 07 BOM CK 0080

Hon'ble Judges : G. S. Kulkarni, J; Jitendra Jain, J

Bench : Division Bench

Advocate : Vicky Nagrani, Neeta V. Masurkar

Final Decision : Dismissed

Judgement

G.S.Kulkarni, J

1. Not on board. Taken on board on an application being moved on behalf of the petitioner.

2. By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner has assailed an order dated 19th June 2023 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai in O.A. No.330 of 2023 whereby his Original Application has been dismissed on the ground that the Central Administrative Tribunal did not have jurisdiction to entertain the original application, leaving him to seek redressal of his grievances, before the Armed Forces Tribunal. The operative part of the impugned order reads thus :-

"(iii) In view of the above analysis of the issue, we conclude that on the grievance of the applicant related to his premature repatriation, his O.A. cannot be entertained by this Tribunal because of want of jurisdiction and therefore, it is dismissed. He may seek redress of his grievance with the Armed Forces Tribunal,

Principal Bench, New Delhi or alternatively with the Ministry of Defence, Government of India, New Delhi.”

3. The relevant facts are required to be noted. The petitioner was appointed in the services of the Indian Army. In response to the office circular dated 19th October 2020 issued by the Armed Forces Tribunal, Principal Bench at New Delhi, he made an application for appointment to the post of Registrar with Armed Forces Tribunal, on deputation.

4. On 7th March 2022, the Armed Forces Tribunal accepted the application of the petitioner, informing him that he was selected for appointment to the post of Registrar, on deputation, for a period of three years. The appointment was subject to the terms and conditions as set out in DOPT Office Memorandum dated 17th June 2010. The relevant paragraph of the said order appointing the petitioner pertaining to premature repatriation reads thus : -

“5. The official will be prematurely repatriated to his parent cadre as per DoP&T OM No.6/8/2009-Estt. (Pay II) dated 17th June 2010 as amended from time to time in case his performance is not found satisfactory during the deputation period in Armed Forces Tribunal, Regional Bench, Mumbai or Administrative Exigencies in public interest.”

5. The petitioner accepted such appointment on deputation, by accepting the terms and conditions as set out in the Office Memorandum, and communicated his acceptance by his letter dated 6th May 2022. It appears that by an order dated 10th May 2023, the competent authority thereafter took a decision to prematurely repatriate the petitioner on administrative exigencies, to his parent office i.e. EMAE, HQ. MG & G Area. To this effect, the order dated 10th May 2023 came to be issued which reads thus : -

“OFFICE ORDER

Reference this office letter No.7(69)/2020/AFT/PB/ Admin-II dated 08th April, 2022.

2. The Competent Authority is pleased to direct that IC-57396N Lt Col Anjan Kumar Sinha, an officer of Indian Army presently working in Armed Forces Tribunal, Regional Bench, Mumbai as Registrar on deputation basis w.e.f. 06th May, 2022 is to be prematurely repatriated on Administrative Exigencies ground to his parent office i.e. EMAE, HQ, MG & G Area. Therefore, the officer is hereby relieved of his duties with immediate effect to report to his parent office.

3. Service Book of the officer during deputation period has been maintained by the parent office of the officer.”

6. The petitioner being aggrieved by the said order approached the Central Administrative Tribunal, Mumbai Bench at Mumbai by the Original Application in question, inter alia praying that the repatriation order be quashed and set aside. However, the Central Administrative Tribunal rejected the petitioner’s application

accepting the respondent's objection that the Central Administrative Tribunal had no jurisdiction, as the petitioner would be governed by the provisions of the Armed Forces Tribunal Act, 2007.

7. Learned counsel for the petitioner would fairly point out that in terms of the Office Memorandum dated 17th June 2010, an office order dated 27th July 2023 has been issued to the effect that the said order of premature repatriation of the petitioner, has been granted an approval by the Hon'ble Defence Minister. A copy of the said office order is placed on record which reads thus : -

" OFFICE ORDER

In pursuance of the Government of India, Ministry of Defence, D (AFT Cell), Sena Bhawan, New Delhi letter No.7(8)/2023-D(AFTC)/CONF dated 27th July 2023, Hon'ble Raksha Mantri has approved the premature repatriation of IC-57396N Lt Col Anjan Kumar Sinha, an officer of Indian Army who is presently on deputation as Registrar at Armed Forces Tribunal, Regional Bench, Mumbai.

2. Accordingly, Lt Col Anjan Kumar Sinha is hereby relieved from the post of Registrar of AFT, RB, Mumbai with immediate effect with a direction to report to his parent cadre/organisation.

3. This Office letter No.27(22)/2022/AFT/PB/Admin-II dated 05th June, 2023 is hereby superseded."

8. Learned counsel for the petitioner in assailing the impugned order would submit that the Central Administrative Tribunal was not correct and justified in dismissing the Original Application of the petitioner , on the ground that the Central Administrative Tribunal had no jurisdiction, for the primary reason that the petitioner was posted on a civil post as "Registrar" of the Armed Forces Tribunal, although on deputation. It is submitted that for such reason, the cause of the petitioner did not fall within the definition of 'service matters' under Section 3(o) of the Armed Forces Tribunal Act, 2007. In support of such submission, reliance is placed on a decision of the Supreme Court in case of Lieutenant Colonel Vijaynath Jha Vs. Union of India & Ors., (2018) 7 SCC 303 and more particularly as to what has been observed by the Supreme Court referring to a decision of the Armed Forces Tribunal in case of Maj. General S.B. Akali Etc. Etc. Vs. Union of India & Ors. in T.A. No. 125 of 2010 as referred in paragraph 19 of the said decision. Learned counsel for the petitioner would also submit that in the case of Lt. Co. R.K. Purohit Vs. Union of India in O.A. 2701/2009 the applicant therein had joined Indian Army in the year 1982 and was promoted to the rank of major in the year 1993. He had thereafter joined as the Assistant Director (General Duty) in the year 2001, as also was posted on deputation in Special Frontier Force (SFF), his Original Application was adjudicated by the Central Administrative Tribunal without an objection as to the jurisdiction. It is submitted that for such reasons, the Central Administrative Tribunal ought not to have held that it had no jurisdiction to entertain the original application filed by the petitioner. He submits that the petitioner therefore has

become entitled to the reliefs as prayed for in the writ petition.

9. On the other hand, Ms. Masurkar, learned counsel for the respondent would submit that the impugned order passed by the Central Administrative Tribunal cannot be faulted. It is her submission that the petitioner was merely appointed on deputation with the Armed Forces Tribunal. Her contention is that once the petitioner was appointed on deputation, it cannot be said that the petitioner was not a member of the Armed Forces and/or had become an employee of the Central Government, so as to apply the provisions of the Administrative Tribunals Act, 1985, and to fall within the jurisdiction of the Central Administrative Tribunal. Ms. Masurkar would submit that the impugned order dated 10th May 2023 is clear that the petitioner had stood relieved.

She would submit that charge of the said post is already handed over to the Deputy Registrar.

10. Having heard the learned counsel for the parties and having perused the impugned order and the record, we are of the opinion that there is much substance in the contention as urged by Ms. Masurkar on behalf of the respondent.

11. On a perusal of the order appointing the petitioner as Registrar with the Armed Forces Tribunal, it is clear that the petitioner's appointment was on deputation for a period of three years. Any appointment on deputation would not bring about a consequences of any extinguishment of the basic employment of the petitioner, which was with the Indian Army. Further in the petitioner's appointment as the Registrar of the Armed Forces Tribunal there was a clear condition that in case the performance of the petitioner was not found satisfactory, during the deputation period with the Armed Forces Tribunal or for Administrative Exigencies, in public interest the petitioner would be prematurely repatriated to his parent cadre with the Indian Army. Such appointment on deputation, with such conditions was accepted by the petitioner.

12. It appears from the order dated 10th May 2023 issued by the Armed Forces Tribunal that the competent authority was of the opinion that the petitioner is required to be prematurely repatriated on Administrative Exigencies, accordingly, he was relieved of his duties with immediate effect. It also appears that such decision of the Armed Forces Tribunal has been now approved by the Hon'ble Defence Minister as per this office order dated 27th July 2023.

13. In the above circumstance, the petitioner if was aggrieved by the impugned decision of his repatriation by the order dated 10th May 2023, and as confirmed by the Hon'ble Minister as informed to the petitioner by the office order dated 27th July 2023, the remedy for the petitioner being a Member of the Armed Forces, would be to approach the Armed Forces Tribunal, considering the provision of Section 14 of the Armed Forces Tribunal Act, 2007, which is conferred with the jurisdiction on "service matters". Sub-section (2) of Section 14 provides that a person aggrieved by an order pertaining to any "service matters"

may make an application to the Tribunal. Section 3(o) of the Armed Forces Tribunal Act defines "service matters" to mean:-

"(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, 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;

14. On a plain reading of the above definition, we are of the opinion that the case of a deputation would be required to be read to fall in sub clause (ii) of Section 3 (o) of the Armed Forces Tribunal Act, 2007, by applying the rule of ejusdem generis considering the ingredients of the said provision namely tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions. Alternatively as deputation is not expressly provided in sub-clause (ii), it can also be considered to be falling in clause (iv) which reads "any other matter whatsoever". Clause (iv) is very wide which may cover all other residual categories and the said phrase is to take colour from the other three enumerations and the main provision of Section 3(o) of the Armed Forces Tribunal Act and has to be read as ejusdem generis. The precondition of a matter to be a service matter has to be relating to the conditions of their service, as held by the Supreme Court in Lieutenant Colonel Vijaynath Jha (supra).

15. Insofar as the exceptions which are carved out in Section 3(o) are concerned, we do not find that the petitioner's case would fall under exceptions

which are made for transfer and posting etc. Thus in our opinion, the Central Administrative Tribunal by the impugned order has rightly arrived at a conclusion that it had no jurisdiction.

16. Insofar as the reliance placed on the decision of the Supreme Court in case of Lieutenant Colonel Vijaynath Jha (supra) on behalf of the petitioner is concerned, the same would not be applicable to the facts of the present case. In the said case, the appellant was commissioned in the Indian Army on 11.03.1989 in the Engineering Discipline. The appellant was subsequently selected and inducted in the Directorate General of Quality Assurance (DGQA) from 31.05.2004. On completion of two years, the appellant was transferred to the Directorate of Indigenisation under DGEME. Quality Assurance Selection Board (QASB) was held at DGQA organisation for selection of the officers of the rank of Lt. Col. and Major for permanent secondment. The appellant was not found fit for permanent secondment by the QASB. The appellant filed a statutory complaint seeking permanent secondment in the DGQA. The complaint was submitted at the time when the appellant was working in the Army. The complaint was forwarded to the Ministry of Defence. Since, the complaint pertained to DGQA organisation, the Government of India, Ministry of Defence, Department of Defence Production by an order dated 17.12.2007 rejected the statutory complaint of the appellant. O.A. No.104 of 2011, was filed by the appellant before the Armed Forces Tribunal, Regional Bench, Lucknow, praying for quashing the order dated 17.12.2007 and issuing a direction to the respondent to grant permanent secondment to the DGQA organisation with all consequential benefits retrospectively. Before the Armed Forces Tribunal, a preliminary objection was raised by the respondent that the relief claimed by the applicant in the O.A. is not maintainable before the Armed Forces Tribunal. The Armed Forces Tribunal heard the parties on the above preliminary objection and vide order dated 23.08.2012 held the O.A. to be not maintainable. The Armed Forces Tribunal upheld the objection in the following terms as quoted by the Supreme Court in paragraph 4 of the said decision :-

"16.The applicant's main grievance is that he was not considered for permanent secondment, DGQA organisation and we find no breach in the Army Act and the Army Rules and it is a separate organisation with the guideline for induction, appointment and promotion and Service HQ has no role in grant of second tenure of (sic) permanent secondment of any officer under the Army Act. The terms and condition of the service officers in DGQA is not creation of the Army Act or the Army Rules and the Armed Forces Tribunal is not the right forum for adjudication of DGQA matters. Hence the Original Application is not maintainable and is returned to the applicant with the liberty to file the same before the concerned authority."

In such context, Supreme Court considering the position of law upheld the order passed by the learned Tribunal that it had no jurisdiction. We wonder as to how this decision in any manner would assist the petitioner in the present facts.

17. Insofar as the reliance placed by the petitioner on the decision of the Tribunal in case of Lt. Co. R.K. Purohit (*supra*) is concerned, we would not accept such decision of the Central Administrative Tribunal to be a decision deciding an issue of jurisdiction. This decision would certainly not dissuade us to take a different view that what we have observed above.

18. We may also observe that merely because the petitioner was posted on deputation with the Armed Forces Tribunal, it would not in any manner obliterate or extinguish his basic employment as a member of the armed forces. The appointment on deputation in the present case, would certainly not amount to a change being brought about in the employer of the petitioner. The basic employment of the petitioner and all conditions of service attached to his employment as a member of armed forces have continued to operate. The petitioner is, therefore, not correct in assuming that his employment with the armed forces has come to an end the moment he accepted appointment on deputation and the armed forces tribunal has become his new employer.

19. In the above circumstances, we are certain that the Tribunal has rightly held that it has no jurisdiction to entertain the petitioner's original application. The petition is without merit. It is summarily rejected. No costs.