

(2012) 09 DEL CK 0048
In the Delhi High Court
Case No : Writ Petition (C) 8781 of 2011

Sanjeev Sharma	Vs	APPELLANT
UOI and Another		RESPONDENT

Date of Decision : 06-09-2012

Acts Referred:

Armed Forces Tribunals Act, 2007 — Section 3(o)(ii), 14, 34
Constitution Of India, 1950 — Article 226

Citation : (2012) 09 DEL CK 0048

Hon'ble Judges : J.R. Midha, J;Gita Mittal, J

Bench : Division Bench

Advocate : Meenakshi Lekhi, for the Appellant; Rajeev Mehra, ASG with Mr. Ravinder Agarwal, CGSC., for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—The petitioner in the instant case was inducted on 9th September, 1997 into the Indian Navy as Sub Lieutenant, Short Service Commissioned Officer in the Hydrographic Cadre. The commission of the petitioner expired on 14th November, 2011. Placing reliance on the initial advertisement pursuant where to he had applied, the petitioner urges pleas of promissory estoppel/discrimination, arbitrariness and unreasonableness on the part of the respondents. The petitioner claims entitlement to permanent commission which has been denied to him. It appears that the petitioner's request for permanent commission was rejected and communicated by a letter dated 8th September, 2011 to him which has been placed on record. The instant writ petition has been filed challenging the action of the respondents. When the writ petition came to be listed before this court for the first time on 16th December, 2011, an objection was raised by the respondents to the effect that this court does not have the jurisdiction to entertain and adjudicate upon the subject matter in view of Section 3(o)(ii) of the Armed Forces Tribunal Act, 2007.

We have heard learned counsel for the parties on this objection today.

2. Our attention has been drawn to Section 3(o)(ii), Section 14 and Section 34 of the Armed Forces Tribunal Act, 2007 by Mr. Rajeeve Mehra, learned Additional Solicitor General. We find that Section 3(o)(ii) defines service matters in relation to the persons subject to the Navy Act to mean all matters relating to the conditions of their service including tenure, commission, appointment, enrolment, etc. Section 14 specifically confers the power to deal with such matters upon the Armed Forces Tribunal.

3. Our attention has also been drawn to Section 34 of the Act which mandates that all proceedings pending before any court including a High Court immediately before the date of establishment of the Tribunal, if being such as would have been within the jurisdiction of the Tribunal if it had arisen after its establishment, shall stand transferred on that date to such Tribunal.

4. Ms. Meenakshi Lekhi, learned counsel appearing for the petitioner has conceded that the Armed Forces Tribunal has jurisdiction over the subject matter of this writ petition but has contended that the same would not oust the jurisdiction of this court under Article 226 of the Constitution of India. It is contended that the respondents are denying the relief to which the petitioner is legitimately entitled for the reason that they apprehend, in case the petitioner is granted relief, lady officers on short service commission would claim entitlement to the same.

5. This position is disputed by learned ASG who submits that the petitioner's prayer for permanent commission has been considered and rejected.

6. Be that as it may, the admitted position is that the Armed Forces Tribunal has the jurisdiction to deal with the subject matter of this writ petition. On consideration of Section 3(o)(ii), Section 14 and Section 34 of the Armed Forces Tribunal Act, 2007, we are also satisfied that the instant matter deserves to be considered by the Armed Forces Tribunal.

7. We are also persuaded to take such a view in view of the submission made by the learned ASG to the effect that two other writ petitions raising an issue of permanent commission in the Indian Navy, similar to that raised by the petitioner, being O.A. nos. 246/2011 and 247/2011 are pending before the Armed Forces Tribunal.

8. At this stage, Ms. Meenakshi Lekhi, learned counsel appearing for the petitioner prays for leave to withdraw this writ petition with liberty to lay a similar challenge as raised in the present matter before the Armed Forces Tribunal. Learned ASG submits that in case a petition is filed by the petitioner before the Armed Forces Tribunal within a period of one month from today, the respondents would not raise or press any objection of limitation or delay against the petitioner.

In view of the above, we direct as follows:-

(i) The instant writ petition is dismissed as withdrawn with liberty as prayed for.

(ii) In case, a petition is filed by the petitioner before the Armed Forces Tribunal within 30 days from today, it shall be considered on merits by the Armed Forces Tribunal and shall not be rejected on the grounds of delay or limitation.

(iii) It shall be open to the petitioner to raise all grounds of challenge and relief available to him including those raised in the present petition.

(iv) It is made clear that we have not expressed any opinion with regard to the merit of the issues raised by either of the parties.

Dasti to the parties.