

(2012) 05 AHC CK 0225

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 19835 of 2012

Satya Narain Tiwari

APPELLANT

Vs

Staff Selection Commission (Central Zone), Allahabad and
Others

RESPONDENT

Date of Decision : 10-05-2012

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14(1), 14(1)(a), 2, 2(a)
Constitution of India, 1950 — Article 236, 312, 312(1), 368

Citation : (2012) 7 ADJ 394

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Advocate : K.S. Rathore and Vinay Kumar Pandey, for the Appellant;

Final Decision : Dismissed

Judgement

Hon'ble Dilip Gupta, J.—The petitioner had responded to the advertisement issued by the Staff Selection Commission, Department of Personnel and Training, Allahabad for recruitment of Constables (General Duty) in the Border Security Force (hereinafter referred to as the "BSF"), Central Industrial Security Force (hereinafter referred to as the "CISF"), Central Reserve Police Force (hereinafter referred to as the "CRPF") and Sashastra Seema Bal (hereinafter referred to as the "SSB"). The petitioner appeared before the Medical Board but a Memorandum dated 6th August, 2011 was issued declaring the petitioner as unfit due to squint in the left eye and mild degeneration. The petitioner was also informed that he could prefer an appeal against the findings of the medical examination by 22nd August, 2011. It is stated that the petitioner preferred an appeal but it has not been decided. This petition has, accordingly, been filed for quashing the Memorandum issued on 6th August, 2011 and for a direction upon the respondents to supply a copy of the appellate order. When the petition was taken up, a preliminary objection was raised by Sri R.B. Singhal, learned Assistant Solicitor General of India assisted by Sri S.K. Rai and Miss. Shikha Dixit that the Court should decline to entertain this petition as the petitioner can file

an application before the Central Administrative Tribunal.

2. Learned Counsel for the petitioner, however, submitted that the remedy of filing an application before the Central Administrative Tribunal is not available to the petitioner. In this connection he has placed before the Court the provisions of Sections 2 and 14 of the Administrative Tribunals Act, 1985 (hereinafter referred to as the Tribunal Act"). He has also placed before the Court the provisions of The Central Reserve Police Force Act, 1949 (hereinafter referred to as the "CRPF Act"), the provisions of the Central Industrial Security Force Act, 1968 (hereinafter referred to as the "CISF Act"), the provisions of The Border Security Force Act, 1968 (hereinafter referred to as the "BSF Act") and the provisions of The Sashastra Seema Bal Act, 2007 (hereinafter referred to as the "SSB Act").

3. Sri R.B. Singhal, learned Senior Counsel appearing for the respondents, in support of his preliminary objection, submitted that the dispute in the present petition relates to recruitment in the four armed forces and, therefore, the aid of Section 2 of the Tribunal Act, which provides that the provisions of the Tribunal Act shall not apply to any member of the naval, military or air forces or of any other armed forces of the Union, cannot be taken by the petitioner. It is also his submission that the Central Administrative Tribunal shall have the jurisdiction to entertain any application since the matter concerns recruitment to All India Service as contemplated u/s 14(1)(a) of the Tribunal Act. In support of his contention, learned Senior Counsel has placed reliance upon the decision of the Supreme Court in L. Chandra Kumar Vs. Union of India and others, , the judgments of this Court rendered in Civil Misc. Writ Petition No. 14859 of 2010 (Prem Chand Yadav v. Union Public Service Commission Thru" Its Secy.) decided on 23rd March, 2010, Civil Misc. Writ Petition No. 7322 of 2012 (Avadhesh Singh v. Union of India Thru Secy. Ministry of Personnel and others) decided on 8th February, 2012, Civil Misc. Writ Petition No. 37682 of 2011 (Makar Dhvaj Yadav v. Govt. of India, Thru. Secy. S.S.C., New Delhi and others) decided on 12th July, 2011, Bhagwan Ram Vs. Regional Director, Staff Selection Commission, Allahabad and another, and D.N. Roy v. Union of India and others, 2008 (2) ESC 1007.

4. I have considered the submissions raised by the Learned Counsel for the parties on the preliminary issue as to whether petitioner can file an application before the Central Administrative Tribunal.

5. Sections 2 and 14(1) of the Tribunal Act, on which reliance has been placed by the Learned Counsel for the parties, are as follows :

2. Act not to apply to certain persons.--The provisions of this Act shall not apply to-

(a) any member of the naval, military or air forces or of any other armed forces of the Union;

(c) any officer or servant of the Supreme Court or of any High Court or Courts subordinate thereto.

(d) any person appointed to the secretarial staff of either House of Parliament or to the secretarial staff of any State Legislature or a House thereof or, in the case of a Union Territory having a Legislature, of that Legislature.

.....

14. Jurisdiction, powers and authority of the Central Administrative Tribunal.--

(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all Courts (except the Supreme Court in relation to-

(a) recruitment and matter concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

6. Learned Counsel for the petitioner has submitted that since Section 2 of the Tribunal Act provides that the provisions of the Tribunal Act shall not apply to any member of "any other armed forces" and CRPF, BSF, CISF and SSB are "other armed forces" of the Union, the preliminary objection raised by the learned Senior Counsel for the respondents is not justified.

7. It is not possible to accept this submission of the Learned Counsel for the petitioner for the reason that the petitioner is not a "member" of the "armed forces of the Union".

8. Section 2(o) of the BSF Act defines "member of the force" to mean an officer, a subordinate officer, an under-officer or other enrolled person and Section 2(k) defines "enrolled person" as an under-officer or other person enrolled under this Act. Likewise, Section 2(aa) of the CISF Act defines "enrolled member of the force" to mean any subordinate officer, under officer or any other member of the Force of a rank lower than that of an under officer. Section 2(d) of the CRPF Act also defines "member of the force" as a person who has been appointed to the Force by the Commandant. Section 2(p) of the SSB Act defines a "member of the force" to mean an officer, a subordinate officer, an under-officer or other enrolled persons. The petitioner is not a member of any of the Armed Forces referred to above as he underwent the recruitment process. Section 2(a) of the Tribunal Act, therefore, does not oust the jurisdiction of the Central Administrative Tribunal.

9. Section 14(1) of the Tribunal Act has, therefore, to be examined to find out whether the Central Administrative Tribunal shall have the jurisdiction to entertain the application.

10. It is the contention of the learned Senior Counsel for the respondents that the Central Administrative Tribunal will have the jurisdiction since the issue

relates to matters concerning recruitment in All-India Service.

11. The contention of the Learned Counsel for the petitioner is that the four armed forces referred to above are not All-India Service and, therefore, the Tribunal will not have the jurisdiction to entertain applications regarding recruitment process.

12. In order to appreciate the contention of Learned Counsel for the parties, it will be appropriate to find out what services constitute the All-India Service.

13. All-India Service, has been defined under the All-India Services Act, 1951 and Section 2 and 2A which are relevant are quoted below:

2. Definition.--In this Act, the expression "an All-India Service" means the service known as the Indian Administrative Service or the service known as the Indian Police Service or any other service specified in Section 2A.

2A. Other All-India Services.--With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, there shall be constituted the following All-India Services and different dates may be appointed for different services, namely :

1. The Indian Service of Engineers (Irrigation, Power Building and Roads);
2. The Indian Forest Service;
3. The Indian Medical and Health Service.

14. It is seen that the "Armed Forces" have not been included in the All-India Service. It is, therefore, not possible to accept the contention of the learned Senior Counsel for the respondents that the four "Armed Forces", namely the BSF, CISF, CRPF and SSB are All-India Service.

15. In this connection it will also be pertinent to refer to Article 312 of the Constitution of India which deals with All-India Services and is as follows :

312. All-India Services.--(1) Notwithstanding anything in Chapter -VI of Part VI or Part XI, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more all-India services (including an all-India judicial service) common to the Union and the States, and, subject to the other provisions of this Chapter, regulate the recruitment, and the conditions of service of persons appointed, to any such service.

(2) The services known at the commencement of this Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this article.

(3) The all-India judicial service referred to in clause (1) shall not include any post inferior to that of a district judge as defined in Article 236.

(4) The law providing for the creation of the all-India judicial service aforesaid may contain such provisions for the amendment of Chapter VI of Part VI as may be necessary for giving effect to the provisions of that law and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368.

16. The aforesaid Article provides that the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament. Under Article 312(1) any other service can be provided by the Parliament in accordance with the procedure prescribed under Article 312(1). The All-India Services Act provides that only three other services shall be All-India Service.

17. As learned Senior Counsel for the respondents has placed reliance upon that portion of Section 14(1)(a) of the Tribunal Act relating to All-India Service, it is not possible to accept the preliminary objection raised by him that the petitioner can file an application before the Central Administrative Tribunal. Even otherwise, recruitment to the four Armed Forces will not be recruitment to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services.

18. Learned Senior Counsel for the respondents has placed reliance upon the decision of the Supreme Court in *L. Chandra Kumar* (supra). This decision does not help the respondents as it does not deal with the controversy involved in this petition. The decision of this Court in *Bhagwan Ram* (supra) does not help the respondents because the recruitment was being made in respect of a post under the Union. The decision in the case of *D.N. Roy* (supra) also does not help the respondents as it relates to a civil post under the Union. The decisions in *Prem Chand Yadav* (supra) and *Avadhesh Singh* (supra) also do not deal with the controversy involved in this petition. In *Makar Dhwaj Yadav* (supra), the Court did not examine the provisions of Section 14(1) of the Tribunal Act which confers jurisdiction upon the Tribunal to entertain the applications.

19. The preliminary objection raised by the learned Senior Counsel for the respondents is, therefore, rejected. Let this petition be heard on merits.