
(2015) 05 RAJ CK 0101

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 15582 and 15587 of 2013

Tej Singh Gurjar and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-05-2015

Acts Referred:

Air Force Act, 1950 — Section 13, 14, 15, 18
Armed Forces Tribunals Act, 2007 — Section 14, 3, 3(o)
Army Act, 1950 — Section 18, 2
Constitution of India, 1950 — Article 226
Navy Act, 1957 — Section 15

Citation : (2015) 05 RAJ CK 0101

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Ved Prakash, for the Appellant; B.S. Chhaba, Asstt. Solicitor General and Aslam Khan, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Alok Sharma, J.—These writ petitions are fundamentally identical on the issue agitated i.e. enrollment of the petitioners as Soldier GD (hereinafter sepoy's) in Indian Army having been denied. Hence these two petitions are being decided by the common order. The writ petition No. 15587/2013 is taken as the lead case for adjudication of these writ petitions. Facts therein will be adverted to.

2. The petitioner being over-age, yet after obtaining special permission to participate in the recruitment process for induction as sepoy in Indian Army, participated in the Army Recruitment Rally at Bundi in April, 2012. The petitioner passed the running test as also the test for evaluation of physical parameters for recruitment as sepoy in Indian Army. He was however declared as medically unfit on 24-5-2012 for reasons of a "submucous fibrosis". The petitioner was then sent for review medical test and declared fit on 10-6-2012. He was thereafter formally allowed to write the examination on 25-11-2011 relating to the Sikar Army Recruitment Rally, and declared successful therein. However instead of being

enrolled and dispatched for training, the petitioner was asked to report again on 23-3-2013 on which date, it is alleged, contrary to all extant rules the petitioner was again subjected to medical test at Military Hospital Jaipur and declared unfit on 6-4-2013.

3. The petitioner sought his justice and correction of the illegality of what he alleged to be wrongful rejection from enrollment as sepoy in Indian Army on the basis of an unprecedented subsequent medical test after having been earlier declared fit, but without avail. A demand for justice seeking rectification of the wrongful rejection/exclusion from enrollment received no response. Hence the writ petition impugning non enrollment of petitioner as a sepoy in the Indian Army as ultra vires the obtaining rules and vitiated by arbitrariness in subjecting the petitioner to a medical re-examination when petitioner was required to be enrolled and dispatched for training for employment as sepoy in Indian Army after having earlier passed the medical fitness test and the written examination.

4. Reply to petition has been filed. It has been submitted that subsequent to first being declared temporarily medically unfit on 25-5-2012 for reasons of diagnosis of petitioner suffering from sub mucous fibrosis, he was sent for review medical examination and declared fit on 10-6-2012. The Army Officer ARO Kota sent review medical documents to ARO Alwar on 1-8-2012, which was after the commencement of the Common Entrance Examination at Karauli on 29-7-2012. The petitioner reported to ARO Alwar only on 17-11-2012 and was permitted to attend the next Common Entrance Examination at Sikar on 25-11-2012 where he was found to have qualified the written test. Having qualified the written test the petitioner was to undergo training at the Rajput Regiment Center. Despite a publication in the news papers and display on notice board at ARO Alwar for the dispatch ceremony of selected candidates to their respective Regiment centers, the petitioners failed to report to ARO Alwar for prior verification of documents. He could not hence be sent for training in the scheduled training programme on 12-12-2012. The petitioners even thereafter failed to report to ARO Alwar for prior verification of documents despite reminders on 15-12-2012, 17-1-2013 as also 15-2-2013 necessary before dispatch for training in the allotted regiment. The petitioners reported to ARO Alwar only on 5-3-2013 and not on 5-1-2013 as stated in writ petition. As per existing instructions/policy applicable to the Indian Army in the recruitment of sepoys, the validity period of medical examination is only for 180 days counted from the of initial successful medical examination--in this case 10-6-2012. The petitioner was subjected a fresh medical examination on 25-3-2013 whereupon he was found unfit at Medical Hospital Jaipur for having been diagnosed for hyper extension elbow B/L. He was declared unfit on 9-4-2013. And in view of unfitness in the medical examination on 25-3-2013/9-4-2014, the petitioners could not be sent for training.

5. Mr. B.S. Chhaba, Additional Solicitor General for the respondents at the outset has submitted that writ petitions relating to enrollment as a sepoy in Indian Army are not maintainable before this court under Article 226 of the Constitution

of India in view of jurisdiction conferred by the Armed Force in Tribunal Act, 2007 (hereinafter "the 2007 Act") on the Armed Forces Tribunal (hereinafter the AFT") to address all manner of disputes relating to armed forces including disputes pertaining to enrollment of a candidate as sepoy in the Indian Army. Reliance has been placed on the judgment of this court in the case of Nathu Lal Gurjar v. Union of India [2014(2) WLC 244] wherein the learned Single judge has held that jurisdiction with regard to commission/appointment in the Armed Forces lies with the AFT in terms of Section 14 of the 2007 Act. It has been submitted that the contention that the AFT under the 2007 Act has jurisdiction only in respect of those who are in service of Indian Army and not those seeking entry into it was negated by this court with reference to Section 14 read with 3(o) of the Act of 2007, and the principle enunciated by this court in the case of Nathu Lal Gurjar (supra) applies with equal force to the case of petitioners who are seeking enrollment as sepoy in Indian Army. It has been submitted that in the circumstances the petitions be dismissed for not being maintainable for reason of availability of an alternate remedy and the petitioners be relegated to the AFT under the 2007 Act for agitating their perceived grievance of arbitrary exclusion from enrollment as sepoy in the Indian Army.

6. Mr. Ved Prakash counsel for the petitioners has vociferously submitted that the jurisdiction of AFT under the 2007 Act is confined to service matters as defined under Section 3(o) of the 2007 Act. He submits that "service matters" so defined are limited to disputants subjected to Army Act, 1950, Navy Act, 1957 and Air Force Act, 1950, i.e. in respect of persons who have a legal relationship or a privity of contract with the Armed Forces, subsequent to commission/recruitment/appointment. It has been submitted that at the pre-appointment/pre-enrollment/pre-commissioning stage a candidate seeking to serve the Indian Army does not partake the character of an employee of the Army nor can be held to be in its service. Counsel has submitted that in this view of the matter the judgment in the case of Nathu Lal Gurjar (supra) has not been correctly decided, albeit the said judgment has been upheld by the Hon'ble Division Bench. He submits that the judgment is per incuriam and based on incorrect interpretation of the Army Act, 1950 and the Act of 2007. Consequently the issue of jurisdiction of this court to entertain matters relating to pre-appointment/pre-enrollment/pre-commissioning stage should be again addressed and decided afresh in view of submissions made.

7. Heard counsel for the parties and perused the material available on record on the petition.

8. The issue in the case of Nathu Lal Gurjar (supra) squarely was as to whether a dispute pertaining to appointment with the armed forces is a service matter within the scope of Section 3(o) of the 2007 Act in respect whereof the AFT was vested with jurisdiction under Section 14 of the 2007 Act. It was held by this court that the AFT had jurisdiction to adjudicate disputes relating to appointment of a candidate with the Indian Armed Forces i.e. Army, Navy and Air. Referring to

"service matters" as defined under Section 3(o) of the 2007 Act, the learned Single Judge pointedly held that the definition of words "service matters" was inclusive in nature and the section therefor was to be interpreted expansively as conferring jurisdiction on the AFT to also adjudicate disputes relating to appointment to the three wings of Indian armed forces as agitated by a candidate" aggrieved of non appointment. It was held that the word "appointment, specially referred to in Section 14 clause (ii) of clause (o) of Section 3 of the 2007 Act, made it clear that a dispute with regard thereto was a "service matter" as defined in the 2007 Act in respect of which the AFT had jurisdiction under the 2007 Act. The learned Single Judge held that taking a contrary view, would be contrary to the clear intent to confer jurisdiction on the Tribunal in matters of appointment to the armed forces and in the event of matters relating to appointment in the three wings of the Indian Army were to be kept out of the jurisdiction of the AFT it would tantamount to negating the object of the promulgation of the 2007 Act.

9. It is admitted by counsel for the contesting parties, the judgment of the learned Single Judge in the case of Nathu Lal Gurjar (supra) was put to challenge before the Division Bench in appeal. That was dismissed. Hence the view of the Single Judge partook the view of the Division Bench, which is binding upon this court.

10. Aside of aforesaid, I have also independently considered the 2007 Act afresh for determining as to whether the AFT would have jurisdiction under Section 14 read with 3(o) of the 2007 Act with regard to dispute relating to enrollment of a candidate as Sepoy in the Army. The preamble of the 2007 Act indicates that it is an Act to provide for the adjudication or trial by the Armed Forces Tribunal of disputes and complaints with respect to commission, appointment enrollment (underlining mine) and conditions of service in respect of persons subject to Army Act, 1950, The Navy Act, 1957 and the Air Force Act, 1950. The preamble thus clearly speaks of disputes inter alia pertaining to enrollment, as in the present case, being within the jurisdiction of the Tribunal. It is thus clear that the AFT constituted under the Act has the jurisdiction to address issue of enrollment to the Indian Army--as agitated in this writ petition.

11. Further, Section 14 of the 2007 Act provides that the Tribunal constituted under the 2007 Act shall exercise "all jurisdiction" powers and authority exercisable by courts in relation to "service matters". "Service matters" have been defined in section 3(o) of the 2007 Act as under:--

"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 posting 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 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."

12. The word "shall include" in definition of "service matters" in Section 3(o) of the 2007 Act evidently make the definition inclusive and expansive in nature and gives it the amplitude. The import of the word "include" in a definition clause of a statute has been considered by the Hon"ble Supreme Court in catena of where it has been consistently held that it reflects the intention, that a given word or words be widely construed to partake matters otherwise not ordinarily within the ken of the word or words in issue. The ordinary meaning of word/s defined in an inclusive manner take the words so defined beyond their natural import allowing for coming into their sweep all additional aspects as intended and evident the definition. It has been held that what is included within a definition is embedded by legation into the ordinary meaning and becomes a part thereof for interpreting the word/s under consideration. Reference for this can be made to the judgment/s of the Hon"ble Supreme Court in the cases of Oswal Fats and Oils Limited Vs. Additional Commissioner (Administration), Bareilly Division, Bareilly and Others, (2010) 3 JT 510 : (2010) 3 SCALE 476 : (2010) 4 SCC 728 : (2010) 4 UJ 2376 and K.N. Farms Industries (Pvt.) Ltd. Vs. State of Bihar and Others, AIR 2009 SC 3031 : (2009) 10 JT 374 : (2009) 9 SCALE 361 : (2009) 15 SCC 275 : (2009) 10 SCR 415 : (2009) 7 UJ 3180 : (2009) AIRSCW 4869 : (2009) 5 Supreme 658 .

13. Mr. Ved Prakash, counsel for the petitioner, submitted that the AFT has jurisdiction only in respect of disputes pertaining to matters within the sweep of the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950 and subject to their jurisdiction. The petitioners were mere applicants for appointment as Sepoys and as such are not such persons covered by the Act of 1950. He submits that therefore the AFT has no jurisdiction to address the grievance of the petitioner.

14. The argument of the counsel for the petitioner is not tenable for more than one reason. Chapter III of the 1950 Act, more particularly Section 14 deals with the mode of enrollment. Section 13 of the 1950 Act deals with procedure before enrollment officers. Section 15 of the 1950 Act deals with validity of enrollment. The issue of enrollment of a person as Soldier GD (sepoy), is therefore covered under the provisos of the 1950 Act. Albeit the applicant for enrollment is not a person within the meaning of Section 2 of the Army Act, 1950, yet the process to which he is to be subjected for enrollment are provided under the Army Act, 1950. Thus a person seeking enrollment in the army is subject to the Army Act, 1950. Besides, service matter defined under Section 3(o) of the 2007 Act has been given expanded meaning by using words "shall include" to incorporate the issue of appointment, enrollment etc. in respect of which jurisdiction has been conferred on the AFT. Evidently, the 2007 Act does not even seek to limit the jurisdiction of the AFT constituted under the 2007 Act strictly to those who are persons subjected to provisions of the Army Act, 1950 as defined in clause 2 of the 2007 Act. The Act of 2007 is an independent Act by itself. It indeed applies to all persons subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950, the 2007 Act but also to those who seek appointment/enrollment/commissioning with the armed forces. Consequently, I am thus of the view that even though the applicant seeking enrollment as Soldier GD (Sepoy) with the Indian Army is not be a person within Section 2 of the Army Act, 1950 yet a dispute with regard to enrollment/appointment in armed forces would be a service matter as defined in Section 3(o) of the 2007 Act amenable to jurisdiction of the AFT under the 2007 Act. The Supreme Court in the case of Commissioner of Income Tax, Delhi Vs. S. Teja Singh, AIR 1959 SC 352 : (1959) 35 ITR 408 : (1959) 1 SCR 394 Supp has held that a statute should be construed in the manner which achieves its object and purpose and not which defeats it. Further in my considered view, even otherwise if at all there be any ambiguity with regard to jurisdiction of the AFT to adjudicate disputes pertaining to enrollment of a candidate as a Soldier GD (Sepoy), the clarity of the preamble of 2007 Act vesting all jurisdiction relating to dispute inter alia with regard to enrollment with Armed Forces Tribunal would lead to the inevitable conclusion that a dispute as to enrollment as soldier GD (Sepoy) in Indian Army has to be addressed by the statutory authority i.e. the Armed Forces Tribunal which has been conferred jurisdiction under Section 14 of the 2007 Act.

15. I, therefore, find no force in the writ petitions. They are dismissed. The petitioners shall be at liberty to avail their remedy under the provisions of the 2007 Act. In that eventuality the time expended by petitioners in pursuing the writ petitions before this court i.e. from 21-8-2013 till three days subsequent to pronouncement of the judgment shall be excluded for computation of limitation, if so warranted, in proceedings taken before the AFT.