

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No.  
T.A. No.

224

199 87

DATE OF DECISION 9-8-1991.Major Iqbal SiddiquiPetitionerShri G.D. GuptaAdvocate for the Petitioner(s)

Versus

Union of IndiaRespondentShri P.H. RamchandaniAdvocate for the Respondent(s)**CORAM**

The Hon'ble Mr. G. Sreedharan Nair,

.. Vice-Chairman(J)

The Hon'ble Mr. S. Gurusankaran,

.. Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? ☒
2. To be referred to the Reporter or not ? ☒
3. Whether their Lordships wish to see the fair copy of the Judgement ? ☒
4. Whether it needs to be circulated to other Benches of the Tribunal ? ☒

  
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 224/1987.      DATE OF DECISION: 9-8-1991.

Major Iqbal Siddiqui & Another .... Applicants.

V/s.

Union of India & Others .... Respondents.

CORAM: Hon'ble Mr. G. Sreedharan Nair, Vice Chairman (J).  
Hon'ble Mr. S. Gurusankaran, Member (A).

Shri G.D. Gupta, counsel for the Applicants.  
Shri P.H. Ramchandani, Sr. counsel for the Respondents.

G. SREEDHARAN NAIR:

JUDGMENT

In this application, the two applicants have assailed the validity of the seniority list of Superintending Surveyors in the Survey of India. The applicants were initially recruited in the Corps of Engineers in the Army and were later appointed as Deputy Superintending Surveyors in the Survey of India.

2. In the counter-affidavit filed on 22.6.1987, a contention is raised by one of the respondents that as the applicants are Army Officers, they are outside the purview of this Tribunal in view of clause (a) of Section 2 of the Administrative Tribunals Act, 1985 (for short, the Act), and hence the Tribunal has no jurisdiction.

3. At the time of final hearing, Advocate Shri P.H. Ramchandani, appearing for the respondents, raised the aforesaid preliminary objection and hence, we have heard the learned counsel on either side on this issue.

4. We are of the view that the preliminary objection has to prevail.

5. Clause (a) of Section 2 of the Act lays down in ~~an~~ unambiguous term that the provisions of the Act shall not apply to any member of the naval, military or air-forces or of any other armed forces of the Union.

6. Whether the organisation Survey of India is an armed force of the Union arose for consideration by a Full Bench of this Tribunal sitting at Bangalore in A.R. RADMANABHA SHARMA v. UNION OF INDIA (O.A. No. 1111 of 1989, decided on 7.1.1991). It was held that the Survey of India cannot be

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held to be an armed force of the Union.

7. Though the aforesaid decision was pressed into service by counsel of the applicants, we have to observe that the preliminary objection that is raised in this case is not covered by it. What falls to be determined here is not whether the Survey of India is an armed force of the Union; the issue is whether the applicants, who having been recruited in the Corps of Engineers in the Army, are members of the military force or in other words the members of the armed force of the Union. No doubt, they have been seconded to the Survey of India. However, <sup>even</sup> according to the counsel of the applicants, such seconding does not subvert their lien in the military force. Indeed, it was submitted by counsel of the applicants that the applicants have a dual status, as members of the military force as well as <sup>as</sup> members of the Survey of India. It was argued that since the dispute that arises in this application relates to seniority of the applicants in the Survey of India, it concerns the applicants only in their second capacity and, as such, the application is well maintainable before this Tribunal. It <sup>was</sup> pointed out that in view of sub-section (1) of Section 14 of the Act, this Tribunal alone has the jurisdiction, powers and authority to determine the controversy as it relates to a service matter concerning the applicants who have been appointed to the Survey of India, a civil organisation under the Union. It was emphasised that Section 2 of the Act has to be read not in isolation, but in conjunction with Section 14.

8. We are unable to agree with counsel of the applicants. Section 2 of the Act deals with the applicability of the provisions of the Act. When it lays down categorically that the provisions of the Act shall not apply to any member of the military force or any other armed force of the Union, the question of exercise of the jurisdiction, powers and authority contemplated in Section 14 of the Act does not arise, when the dispute relates to the service matter concerning a member of the

armed force. Besides, it has also to be pointed out that conferment of jurisdiction on the Tribunal under Section 14 of the Act is only subject to the other provisions therein, for the provision in sub-section (1) of Section 14 begins with the expression "Save as otherwise expressly provided in this Act".

9. The function of the courts is to decide upon the exact meaning of what the legislature has said. The judicial function is confined to applying what the legislature has indicated after asserting what it is that the legislature has indicated (vide Bindra's Interpretation of Statutes - Seventh Edition page 2). By enacting Section 2 of the Act, the legislature has clearly revealed its intent not to make the Act applicable to certain categories of persons, of which members of the armed forces of the Union form one. That being so, merely because a member of an armed force of the Union gets himself inducted to a civilian organisation on a working arrangement, his lien continuing in the armed force, the provisions of the Act cannot be made applicable to him. That the controversy is in relation to the seniority in the civil organisation wherein he is working at the moment, cannot make any difference in the applicability of the provisions of the Act.

10. In this context, it is worthwhile to refer to Section 2 of the Army Act, 1950, which is as follows: -

"2. Persons subject to this Act - (1) The following persons shall be subject to this Act wherever they may be, namely: -

- (a) Officers, junior commissioned officers and warrant officers of the regular Army;
- (b) Persons enrolled under this Act;
- (c) Persons belonging to the Indian Reserve Forces;
- (d) Persons belonging to the Indian Supplementary Reserve Forces when called out for service or when carrying out the annual test;

- (e) Officers of the Territorial Army, when doing duty as such officers, and enrolled persons of the said Army when called out or embodied or attached to any regular forces, subject to such adaptations and modifications as may be made in the application of this Act to such persons under sub-section (1) of Section 9 of the Territorial Army Act, 1948;
- (f) Persons holding commissions in the Army in India Reserve of Officers, when ordered on any duty or service for which they are liable as members of such reserve forces;
- (g) Officers appointed to the Indian Regular Reserve of Officers, when ordered on any duty or service for which they are liable as members of such reserve forces;
- (h)           xx           xx           xx
- (i) Persons not otherwise subject to military law who, on active service, in camp, on the march or at any frontier post specified by the Central Government by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, the regular Army.

"(2) Every person subject to this Act under clauses (a) to (g) of sub-section (1) shall remain so subject until duly retired, discharged, released, removed, dismissed or cashiered from the service."

11. From the aforesaid provisions, it is clear that the Army Engineers seconded temporarily or permanently to the Survey of India continue to be subject to the Army Act.

12. The provision with respect to 'Military Promotion' contained in the Survey of India (Recruitment from Corps of Engineer Officers) Rules, 1950 also is relevant in this context. Rule 9 of those Rules provides that Military Officers in the Survey of India will be considered for military substantive promotion in turn with others in their corps and their fitness for such promotion will be judged by their military confidential reports. The Full Bench decision relied upon by the applicants actually makes a distinction between the Army Engineers seconded to the Survey of India and the civilian employees who are directly recruited and it has been held that except the Army Engineers seconded temporarily or permanently with the Survey of India who per se are subject to the Army Act, the civilian direct recruits cannot be stated to be either in "active service" as defined in the Army Act or employed by, or in the service of the regular Army. In the penultimate paragraph of the judgment, it was held that even though the Army Engineers seconded temporarily or otherwise to the Survey of India continue to be

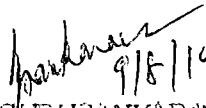
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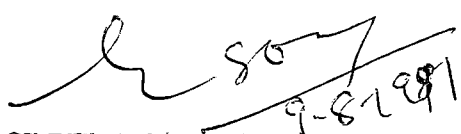
members of the Armed Force. so long as they are governed by the Army Act, the civilian employees unless drafted for "active service" or otherwise brought under the Army Act, are not members of the Armed Force. On the broad question that was referred for consideration of the Full Bench whether the Survey of India is an armed force of the Union, it was answered in the negative.

13. Thus, the findings in the Full Bench Judgment <sup>also</sup> go a long way in support of the preliminary objection relating to the non-applicability of the provisions of the Act to the applicants.

14. In the result, we hold that the application is not maintainable before this Tribunal as the provisions of the Act are not applicable to the applicants in view of clause (a) of Section 2 of the Act.

15. We dismiss the application.

  
(S. GURUSANKARAN)  
Member (A)

  
(G. SREEDHARAN NAIR)  
Vice Chairman (J)

9-8-1991.