

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU**

Hearing through video conferencing

O.A. No. 62/499/2021

This the 13th day of April, 2021



HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)
HON'BLE MR. ANAND MATHUR, MEMBER (A)

1. Abdul Majeed Bhat, S/o Mohammad Ahasan Bhat, R/o Kathair Gund Tehsil Chadoora District Budgam-191113. (Aged 52 years).
2. Mushtaq Ahmad Sofi, S/o Ghulam Ahmad Sofi, R/o Kathair Gund Tehsil Chadoora District Budgam-191113. (Aged 52 years).

.....Applicants

(Advocate:- Mr. Aamir Latoo)

Versus

1. Union of India through its General Manager, Northern Railways, Baroda House, New Delhi-110001.
2. Principal Chief Security Commissioner, RPF Northern Railways Baroda House, New Delhi-110001.
3. Senior Divisional Commissioner (RPF), Northern Railway, Srinagar-191111.
4. Senior Divisional Commissioner (RPF), Northern Railway, Budgam-191111.

.....Respondents

(Advocate: Mr. S.A. Naik)

ORDER
ORAL

(Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member-J)

1. Applicants Abdul Majeed Bhat and Mustaq Ahmad Sofi have filed the present O.A. seeking quashment of impugned order No. 940-E/2-RPF/Trf-CT/KV/2018-21 (C) dated 15.03.2021 passed by respondent No. 2 (Principal Chief Security Commissioner, RPF Northern Railways, Baroda House, New Delhi) whereby the applicants have been transferred from Kashmir Valley to Lucknow Division. Applicants were appointed as Constables in Railway Protection Special Force in 1995 and subsequently promoted as

Head Constables. Applicants have challenged the impugned order on number of grounds as detailed in the O.A.



2. Learned counsel for the respondents has raised a preliminary objection regarding the jurisdiction of the Central Administrative Tribunal over the Railway Protection Force organization. Learned counsel for the respondents further submits that the persons (applicants) working in RPF, if they have any grievance, they have to approach the Hon'ble High Court. Learned counsel for the respondents placed reliance on the judgment of Hon'ble Gujarat High Court in the case of Shiv Kumar Tiwari Vs. Union of India and others (1986) GujLH 762 wherein the Hon'ble High Court has held that as per the Railway Protection Force (Amendment) Act, 1985, the Railway Protection Force is an “armed force of the Union” and as per Section 2 (a) of the Administrative Tribunals Act, 1985, the Act shall not apply to any member of the naval, military or air forces or of any other armed forces of the Union;

3. We also note the judgement dated 22.07.2011 of Principal Bench of this Tribunal in O.A.2646/2011 titled Hansraj vs. Union of India, the relevant paras are extracted below :-

“2. As can be seen from the prayer clause the grievance of the applicant is regarding appointment to the post of Sub Inspector in Railway Protection Special Force, whereby he was appointed on the said post w.e.f. 20.04.2009 and thereafter sent for practical training of two months from 20.11.2009 to 20.01.2010 and was also required to appear in the written examination but he was declared failed in one of the papers and consequently he was discharged vide letter dated 12.05.2010. Thus, the grievance of the applicant in this case relates to his

appointment/discharge from the post of Sub Inspector in Railway Protection Special Force. We are of the view that this Tribunal has got no jurisdiction to entertain the matter in view of the provisions contained in Section 2 (a) of the Administrative Tribunals Act, 1985. At this stage, it will be useful to reproduce Section 2 (a) of the Administrative Tribunals Act, 1985, which thus reads:



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.

3. It cannot be disputed that the Railway Protection Force is an armed force of the union. We are saying so as the Railway Protection Force has been constituted under the Railway Protection Force Act, 1957. At this stage it will be useful to quote Section 3 of the Act, which thus reads:

3. Constitution of the force.(1) There shall be constituted and maintained by the Central Government [an armed Force of the Union] to be called the Railway Protection Force for the better protection and security of railway property. (2) The force shall be constituted in such manner shall consist of such number of superior officers subordinate officers, under officers and other enrolled members of the Force and shall receive such pay and other remuneration as may be prescribed.

4. Thus, from the reading of the aforesaid provision it is evident that the Railway Protection Force is an armed force of the Union and thus in view of the provisions contained in Section 2 (a) of the A.T. Act, relevant portion of which has been reproduced above, this Tribunal has got no jurisdiction to entertain the matter.”

4. Further, the law on this point is no longer res integra and is fully covered by the ratio as laid down by the judgment of Full Bench (Central Administrative Tribunal) in Satendra Narain Pandey Vs. Union of India and others OA-2478/91 decided on 5.2.1993 (CAT (F.B.) Vol. III page 183). The Full Bench after considering the provision

of Section 2 (a), Section 14, 28 of the Administrative Tribunals Act, 1985 and Article 323-A of the Constitution in para 7 has inter alia held that:



“7. .The Tribunal has not been conferred jurisdiction to adjudicate all types of disputes of the specified personnel. Jurisdiction is conferred only in relation to their recruitment and service matters. Other types of disputes of these personnel are outside the jurisdiction of the Tribunal. Section 2(a) is an exception to Section 14. Therefore, when Section 2 (a) says that the provisions of the Act shall not apply to a member of the armed forces of the Union, it means that provisions of the Act shall not apply to adjudication of disputes relating to recruitment and service matters. In other words, the disputes in regard to recruitment and conditions of service of members of the armed forces of the Union are outside the purview of the Act. Mere membership of the armed forces of the Union is not enough to oust the jurisdiction of the Tribunal. The jurisdiction of the Tribunal would be ousted only if the dispute relates to recruitment to the armed forces. We may illustrate the meaning with examples. Let us take the case of a person who had held a civil post under the Union of India, resigned from the said post and became a member of the armed forces of the Union. If after his becoming a member of the armed force of the Union, he applies to the Tribunal to recover arrears of pay in regard to the civil post held by him, can his application to the Tribunal be rejected on the ground that he was a member of the armed force of the Union on the date of the application? The answer can only be No. The reason is that the dispute which he has raised has nothing to do with his membership of the armed forces of the Union. Suppose, a member of the armed force of the Union after his retirement from the armed force is appointed to a civil post under the Union. If he has any dispute regarding his conditions of service as an erstwhile member of the armed force of the Union, he would not be entitled to invoke the jurisdiction of the Tribunal as the dispute relates to his conditions of service as the member of the armed forces of the Union even though on the date he invokes the jurisdiction of the Tribunal, he was not a member of the armed forces of the Union. Hence, on a true interpretation of Section 2 (a) of the Act, we hold that the

Act does not apply to matters relating to recruitment to armed force of the Union and to service matters of members of the armed force of the Union.”



5. Learned counsel for applicants relied upon the case of The Union of India v/s Shaukat Ali, 2015 Supreme (Raj) 1690, Awadhesh Singh v/s Union of India, 2013 Supreme (Cal) 268, Sarbeswar Behara v/s Union of India decided by Hon’ble High Court of Calcutta vide order dated 19.03.2019 and Ramu v/s The Inspector General decided by Hon’ble High Court of Karnataka vide order dated 17.12.2015 in support of his contention that the applicant being railway servants are entitled to approach this Tribunal for redressal of their grievance.

6. Applicants’ contention that they being railway servants in terms of Section-10 of the Railway Protection Force Act, 1957 are therefore entitled to approach the Tribunal can best be rejected by reading the observations of Hon’ble High Court of Gujarat in order dated 14.02.1986 in Shiv Kumar Tiwari v. Union of India, (1986) GujLH 762 that:

“By virtue of S. 4 of the amending Act (60 of 1985), for the words “a force,” the words “an armed force of the Union” were substituted in S. 3, Thus, it is clear that the Railway Protection Force to which the petitioner belongs, is “an armed force of the Union” subsequent to the amendment referred to above. Section 10 of the Railway Protection Force Act, 1957, reads as follows:

“10. Officers and members of the force to be deemed to be railway servants.— The Inspector-General and any other superior officer and every member of the force shall for all purposes be regarded as railway servants within the meaning of the Indian Railways Act, 1890, other than Chap. Vi-A thereof, and shall be entitled to exercise the powers conferred on railway servants by or under that Act.”



This cannot, in any way, take out the definition given in the amended Act regarding the Railway Protection Force wherein it is stated that there will be “an armed force of the Union.” Section 10 will not, in any way, change the character of the staff of the Railway Protection Force being the armed force of the Union except deeming them as railway servants within the meaning of the Indian Railways Act, 1890, for the purpose of exercising powers conferred on railway servants by or under that Act. Thus, it is only for this limited purpose the officers and members of the Railway Protection Force which is now an armed force of the Union are deemed to be railway servants.

6. Thus, from the foregoing discussion, it is very clear that the petitioner who belongs to the Railway Protection Force comes under the category of “an armed force of the Union” and as such, the provisions of the Administrative Tribunals Act, 1985, will not be applicable to him. If that be so, there is no question of sending back the petition filed by him to the Administrative Tribunal and the said petition has to be dealt with on merits.”

7. Apart from the case of Shiv Kumar Tiwari (supra), the facts of the citations relied upon by the applicants are totally distinguishable from and inapplicable to the facts of the present case.

8. Thus, as per the settled law, it is clear that mere membership of the Armed Forces of the Union is not enough to oust the jurisdiction of the Tribunal under Section 2 (a) of the Act and what is necessary to oust the jurisdiction is whether the dispute relates to service of the Armed Forces of the Union. As already stated above, the grievance highlighted by the applicants in this OA is regarding their transfer from Kashmir Valley to Lucknow Division, which is a service matter, as such, we are of the view that the provisions of Section 2 (a) of the Act is clearly attracted and the jurisdiction of this Tribunal is ousted to decide the matter relating to the transfer of the applicants.

9. Taking the aforesaid facts and circumstances of the case into consideration along with the judgments relied upon by the respondents, we have no hesitation in arriving at the conclusion that this Tribunal does not have jurisdiction to entertain this O.A. as the applicants are a Member of the Armed Force of the Union. We, therefore, dismiss this O.A. for want of jurisdiction. No costs.



(ANAND MATHUR)
MEMBER (A)

Arun

(RAKESH SAGAR JAIN)
MEMBER (J)