

25

OPEN COURT
**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(ALLAHABAD THIS THE 30th DAY OF OCTOBER, 2012)

Present

**HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MR. SHASHI PRAKASH, MEMBER (A)**

Original Application No.1342 OF 2006
(U/S 19, Administrative Tribunal Act, 1985)

Surendra Kumar Chauhan Son of Sri Bhole Chauhan, resident of Village Tarwa, Post Office-Bilonjha, District Mau.

.....Applicant

V E R S U S

1. Union of India through the Secretary Ministry of Defence, New Delhi.
2. Maj./Lt. Col. O.C./(PR&D) Battery, Artillery Centre, Nasik, Post office Nasik Road Camp-422120.

.....Respondents

Advocates for the Applicant:- Shri Ram Dawar

Advocate for the Respondents:- Shri R.K. Srivastava

O R D E R

(DELIVERED BY HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J))

Counsel for the applicant Shri Ram Dawar is on leave on the ground of ailment. This was the position on 15.3.2012, 19.3.2012, 4.4.2012, 22.5.2012, 12.9.2012 and today also. Shri D. Tiwari holding

1

brief of Shri R.K. Srivastava who represents the respondents take a preliminary objection that the original application is time barred as the applicant is impugning the order which was passed on 6.6.2000 while the instant OA has been filed in the year 2006. Since the matter pertains to the year 2006, we propose to decide the OA by exercising the power under rule 15(1) of CAT (Procedure) Rules,1987.

2. The facts of the case are that the applicant applied for recruitment as soldier GD category in the year 1989. He was subjected to written test which was held in 1999. Result of the written test was declared, in which the applicant declared successful subject to medical test. On 6.6.2000 the applicant was discharged being found medically unfit. Sri Tiwari submitted that since the appointment is subject to fulfillment of medical test and since he did not qualify the same, therefore, he was not appointed. To this effect the averment has been made in para No.C and D of the counter affidavit which reads as under:-

"C. That No.1443184K Ex-Recruit Surendra Kumar Chauhan i.e. applicant, S/o Shri Bhola Chauhan was enrolled in the Regiment of Artillery on 09.02.2000 through Branch Recruiting office, Varanasi for a contractual period of engagement of 17 years in colour and 02 years in reserve or attaining 42 years of age



25

whichever is earlier. He had reported to 7 Recruit Receipt and Dispatch Battery, Artillery Centre, Nasik Road Camp for training. In accordance with Para 135 of Regulation for the Army 1987 (Revised Edition) any Army Headquarters Letter No.A/76976/Rtg 5(OR) (A) dated 16.04.1991, the recruits reporting to respective Training Centers through various Recruiting offices are required to undergo re/medical examination for their medical fitness at Centre Medical Inspection Room of the respective Training Centre as certain diseases in quiescent stage are not detected by Recruiting Medical Officer due to lack of infrastructure and laboratory facilities. A photocopy of letter dated 16.04.1991 is annexed herewith and marked as Annexure CA-1 to this counter affidavit. Accordingly, the petitioner, on arrival at Artillery Centre, Nasik Road Camp underwent medical examination and it was detected that the petitioner is having "CHEST DEFORMITY" and consequently he was referred to Command Hospital (Southern Command) Pune for opinion of Senior Advisor (Surgical), wherein he was declared surgically unfit for military services. Thereafter photocopy of AFMSF-2A and opinion of Senior Advisor (Surgical) in respect of the petitioner were forwarded to the Director General of Medical Services (Army) vide letter dated 25.03.2000 for their final opinion. A photocopy of letter dated 25.03.2000 is annexed herewith and marked as Annexure CA-2 to this counter affidavit. On perusal of Director General of Medical Service (Army) directed vide their

Y

26

letter dated 19.04.2000 that the petitioner be invalidated out of service in medical category 'EEE' A photocopy of letter dated 19.04.2000 is annexed herewith and marked as Annexure CA-3 to this counter affidavit.

D. That as such, the petitioner was brought before Invaliding Medical Board to assess the cause, nature and degree of disablement. The duly constituted Invaliding Medical Board held on him at Military Hospital Devlali on 15.05.2000 viewed his disability viz "CHEST DEFORMITY 786 (h)" as neither attributable to nor aggravated by Military Service and also not connected with service and assessed the degree of disablement at less than 20%. His Invalidity Medical Board Proceedings duly approved by Deputy Directorate of Medical Services, Headquarters Maharashtra and Gujarat Area vide their letter No.890001/1/M-5(A)/B/4/3 Dated 26.05.2000. Accordingly petitioner was invalidated out of service with effect from 06.06.2000 (afternoon) under Rule 13(3) item IV of Army Rule 1954. A photocopy of letter dated 26.05.2000 is annexed herewith and marked as Annexure CA-4 to this counter affidavit."

3. Learned counsel for the respondents also takes an objection that the instant original application is not maintainable because this Tribunal ~~has~~ lacks jurisdiction to entertain this original application because the applicant is soldier in defence service, therefore, this Tribunal has no jurisdiction to entertain this original application in



terms of section 14 and 19 of the Administrative Tribunals Act 1985.

Therefore, as per Section 14 of the Administrative Tribunals Act this Tribunal has no jurisdiction to entertain the instant petition. He placed reliance upon judgment of Kolkata Bench in case of **Bhola Nath Sen Vs. U.O.I & Ors 1991(1) SLR 339.**

4. On careful consideration of the rival contentions of the parties insofar as the issue of jurisdiction is concerned, as ruled by the Apex Court in **Ramesh Chandra Sankla v. Vikram Cement, 2009 (1) SCC (L&S) 706** jurisdictional facts are distinguishable from other preliminary issues and are to be established before the Court taking up a list on merits. Also held in **Jagadguru Mahaswamiji v. V.C. Allipur, 2009 (4) SCC 625** that a jurisdictional issue can be raised at any time and a Court, which is coram non judice cannot deal with the issue on merits. The Apex Court in **Summitomo Corporation v. CDC Financial Services, 2008 (4) SCC 91** ruled that for a statutory remedy for which a forum has to be specified, the jurisdictional issue is important.

5. In above view of the matter, since as per Section 3 of the Constitution of Force i.e. the Railway Protection Force Act 1957, it is the Armed Forces of the Union of India, therefore, as per Section 2 (a)



of the A.T. Act, an Armed Force of the Union is not amenable to the jurisdiction of the Tribunal and if any service grievance relating to a member of the service or a person aspiring to be a member of the service regarding recruitment when approaches the Tribunal for redressal of his grievance, the condition precedent is that this should concern his holding of a civil post under the Union or a civilian in the Armed Force. As the applicant is aspiring to be the members of the disciplined force and are not civilians, as per Section 14 of the A.T. Act, the Tribunal is *coram non judice*. Moreover, a Division Bench at Calcutta Bench of the Tribunal in *Bhola Nath Sen (Supra)* ruled that members of the RPF are described as Railway servants only to discharge their day-to-day duties but are not amenable to the jurisdiction of the Tribunal.

6. We have considered the submissions and have gone through the pleadings. The objections raised by the respondents are tenable, because the original application is not maintainable before this Tribunal on the behest of the applicant who is a solider. Only a civilian in armed forces can approach this Tribunal for redressal of their grievances. Therefore, the Original application deserves to be dismissed. Secondly, also the original application is highly belated as the applicant is impugning the order of 2000 by filing the original



20

application in 2006. Therefore, also the original application deserves to be dismissed on the ground of delay and latches. Accordingly, we are of the view that this Tribunal lacks jurisdiction to entertain the original application. Accordingly, the same is dismissed on that ground alone.

No costs.



Member-A



Member-J

/ns/