

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM EBNCH**

O.A.No. 257 of 2007

Wednesday, this the 22nd day of August, 2007.

CORAM:

**HON'BLE MRS SATHI NAIR, VICE CHAIRMAN
HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER**

Sajan Jacob,
S/o late E.C.Yacob,
Poomattathil,
Eralil House,
Paingattoor.P.O.
Muvattupuzha,
Ernakulam Dsistrict. : **Applicant**

(By Advocate Sabu Francis)

Versus

1. Union of India represented by its Secretary, Defence Department, New Delhi.
2. The Lieutenant Colonel, Coord & Pers Dte/EIA, Engineer-in-Chief Branch, Army Headquarters, Kashmir House, DHQ Post, New Delhi-110 011.
3. The Officer-in-Charge, Records, Record Office, Madras Engineer Group, Sivanchetty Garden P.O. Post Box No.4201, Bangalore-42. : Respondents

(By Advocate Mr TPM Ibrahimkhan, SCGSC)

The application having been heard on 10.08.2007, the Tribunal on 22.08.2007 delivered the following :

ORDER

HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER

The applicant is the son of late Shri E.C.Yacob who was an ex-Military personnel functioning as Sapper and who died in November 1979 when the applicant was just two years old. The applicant is now seeking employment on compassionate grounds on the basis of the fact that his father served the military service.

2. Counsel for respondents raised a preliminary objection to the effect that the case of the applicant cannot be dealt with within the jurisdiction available with the Tribunal. According to the counsel, under Section 2(a) of the Administrative Tribunal's Act there is a bar.
3. Counsel for applicant however, submits that the applicant is not a member of the Armed Forces. He is only the ward of the Armed Forces of ex-Military personnel.
4. The question was to be decided is as to the jurisdiction. Section 2(a) of the A.T.Act was discussed in Full Bench judgment of this Tribunal (Principal Bench) in O.A.2478/1991 (Satyendra Narayan Pandey v. Union of India and others) decided 5.2.1993 and O.A.939/1991 of this Bench (K Narayanan Alias Swamy Narayanananda Saraswathy v. Union of India and others decided on 12.3.1992). In the case of Narayanan reference was to the effect as to whether a person who having retired as a member of the Armed Forces of the Union can approach the Tribunal about his pension in the Armed Forces; whether a person who having retired as a Member of the Armed Forces and getting absorbed thereafter in a civilian wing can approach the Tribunal while in service in that civilian wing or after his retirement to seek retiral benefits by getting his service

as erstwhile member of the Armed Forces added to his civil service; whether a person having retired as a member of any Armed Forces and absorbed in a Public Sector Undertaking can approach the Tribunal for getting his service as member of the Armed Forces reckoned for the purpose of retiral benefits. After discussing Section 2(a) and Section 14 of the A.T.Act, Full Bench referred to a decision of the Apex Court in *Bed and others v. Director General, Central Industrial Security Force and others* (1988 Suppl 790). The Full Bench held as under:

.....That was a case in which the termination of services of members of an Armed Force of the Union was challenged under Section 19 of the Act before the Patna Bench of the Central Administrative Tribunal. The Patna Bench of the Tribunal ordered return of the application on the ground that it had no jurisdiction to entertain the application made by persons who were members of the Armed Force of the Union by reason of Section 2(a) of the Act. The Supreme Court affirmed the view taken by the Patna Bench of the Tribunal and held that the Tribunal had no jurisdiction to entertain the applications challenging termination of services of members of the Armed Force of the union having regard to the bar contained in Section 2(a) of the Act. The decision of the Supreme Court makes it clear that the Act shall not apply not only to a serving member of the Armed Force of the Union but also to one who had ceased to be a member of such a force. It is implicit that the bar is attracted when the right accruing by virtue of his being a member of the Armed Force of the Union is sought to be enforced by invoking the provisions of the Act."

(Underlining supplied)

5. In the case of *Satyendra Narayan Pandey* after discussing Section 2 and 14 the reference was as under:

"Whether on a true interpretation of the provisions of Section 2(a) read with Sections 14 and 28 and other provisions of the Administrative Tribunals Act, 1985, the provisions of the said Act apply to a member of any armed force of the Union, in matters relating to his recruitment to any All India Service or to any Civil Service of the Union or a Civil post

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under the Union."

After discussing Section 2(a) and 14 of the A.T.Act the Full Bench had held as follows:

"11. Our answer to the question referred to the Full Bench is that the provisions of Section 2(a) of the Act are attracted only to matters relating to recruitment to the Armed Forces or to service matters of members of the Armed Forces of the Union etc."

6. In *R Natchatrakannan v. Union of India and another* reported in (1993) 23 ATC, 694 as regards claim for disability pension of an Armed Forces personnel, the Tribunal held that the relief is relatable to the service of the applicant as the member of the Armed Forces. It is not a right which arose after he left the army but it is a right which arose at the time of his leaving the army when he was still a member of the Armed Forces. The Tribunal then held that the applicant was a member of the Armed Forces within the meaning of Section 2 and dismissed the application.

7. The above Full Bench decisions as well as the Division bench decision would lead to the conclusion that the Tribunal has jurisdiction to consider any service matter relating to civil post provided the right to apply for such a post or appointment is independent of the service in the Armed Forces of an individual. In other words, when a person applies for a civilian post in the Union of India in his individual capacity that becomes the service matter within the jurisdiction of the Tribunal even if the claimant to that post happens to be a member of the Armed Forces. In such a case, notwithstanding the fact that he is a member of the Armed Forces, Section 2(a) of the Act is not applicable. Instead, if a right to apply for a post arises out of service rendered in an Armed Forces then, notwithstanding the fact that the post apply for is a civilian post, the jurisdiction of this Tribunal is not available. The Full Bench judgment in the case

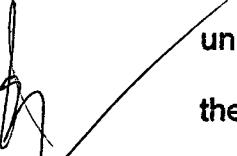


of Narayanan supra arrived at after referring to the decision of the Apex Court in Beda Nand Singh clearly states that the bar is attracted when the right accruing by virtue of one's being a member of the Armed Forces of the Union is sought to be enforced by invoking the provisions of the Act.

8. In the instant case, the applicant stakes his claim for compassionate appointment not on the basis of his individual capacity but on the basis that he is the son of a deceased military personnel. In other words, the right accrues to the wards of military personnel to stake compassionate appointment on the basis of the words 'father was a Defence service personnel'. This, by the Full Bench judgment ousts the case from the jurisdiction of the Tribunal.

9. In so far as compassionate appointment is concerned, it appears from the documents filed that a ward of a deceased service personnel could be considered for employment in Defence Services provided he was within the age limit and possessing educational qualification. A-9 refers. Again it also appears from A-8, that the Ministry of Defence releases vacancies for suitable jobs for dependents of deceased soldiers whose death has been accepted as battle casualty. Thus, in respect of compassionate appointment of the wards of the Armed Forces, it appears that certain other rules are also available.

10. Counsel for the applicant referred to the scheme for compassionate appointment vide order dated 14th October 1999 issued by the DOPT wherein the scheme is applicable to a dependent of family member of a member of Armed Forces who dies/die during service or is/are killed in action or is/are medically boarded out and is/are unfit for civil employment. The term dependent family member also interalia means brother or deceased in the case of unmarried government servant or member of the Armed Forces. According to the counsel for the applicant, the jurisdiction of the Tribunal in dealing with the



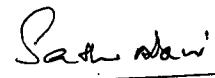
cases falling under the above rules/regulations, the applicant's case is covered. This submission cannot be accepted. For, the scheme framed by the DOPT can equally be applied by the authorities in the Armed Forces when they consider the compassionate appointment of dependents of military person who died or who were killed in action. The DOPT instructions nowhere stated that authorities in the armed forces cannot invoke the provisions of the same.

11. Taking into account the ratio as contained in the Full Bench judgment in the case of Narayanan(supra) and applying the same in the facts of this case, we are of the considered opinion that cases of dependents of deceased Armed Forces Personnel for compassionate appointment do not fall within the jurisdiction of this Tribunal and the O.A is therefore rejected for want of jurisdiction. The applicant can seek his remedy in the appropriate forum. It is made clear that we have not gone into the merit of the case at all. No costs.

Dated, the 22nd August, 2007.



K.B.S.RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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