

(2012) 01 KL CK 0138

High Court Of Kerala

Case No: Writ Petition (C) No. 32970 of 2011

Akhil G

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision: Jan. 31, 2012

Acts Referred:

- Air Force Act, 1950 - Section 18
- Armed Forces Tribunals Act, 2007 - Section 3(o), 14
- Army Act, 1950 - Section 3, 18
- Constitution Of India, 1950 - Article 226, 227
- Evidence Act, 1872 - Section 123, 124
- Navy Act, 1957 - Section 15(1)

Citation: (2012) 1 KLJ 597

Hon'ble Judges: S. Siri. Jagan, J

Bench: Single Bench

Advocate: K. Kesavankutty, for the Appellant; P. Parameswaran Nair (ASG), for the Respondent

Final Decision: Dismissed

Judgement

S. Siri Jagan, J.

When the matter was taken up for admission, the Court raised a question as to whether the proper forum for adjudicating the grievances of the petitioner is not the Armed Forces Tribunal under the Armed Forces Tribunals Act, 2007. The Central Government Counsel appearing would submit that there is still some doubt regarding the same since in respect of appointment and enrolment, the Tribunal takes a view that the Tribunal does not have jurisdiction in so far as going by the definition of "service matters" in Section 3 (o), only over persons subject to the Army Act, 1950, the Tribunal will have jurisdiction and persons seeking appointment and enrolment concerned do not become subject to the Army Act. Therefore, I have

considered the question as to whether the petitioner should be relegated to the remedy by way of approaching the Armed Forces Tribunal.

2. Section 14 deals with the jurisdiction, powers and authority of the Armed Forces Tribunal in service matters. Section 14 reads thus:

JURISDICTION, POWERS AND AUTHORITY OF THE TRIBUNAL

14. Jurisdiction, powers and authority in service matters. -

(1) Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority, exercisable immediately before that day by all courts (except the Supreme Court or a High Court exercising jurisdiction under article 226 and 227 of the Constitution) in relation to all service matters.

(2) Subject to the other provisions of this Act, a person aggrieved by an order pertaining to any service matter may make an application to the Tribunal in such form and accompanied by such documents or other evidence and on payment of such fee as may be prescribed.

(3) On receipt of an application relating to service matters, the Tribunal shall, if satisfied after due inquiry, as it may deem necessary, that it is fit for adjudication by it, admit such application; but where the Tribunal is not so satisfied, it may dismiss the application after recording its reasons in writing.

(4) For the purpose of adjudicating an application, the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908). while trying a suit in respect of the following matters, namely;-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of section 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commission for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing an application for default or deciding it ex parte;

(h) setting aside any order of dismissal of any application for default or any order passed by it exparte; and

(i) any other matter which may be prescribed by the Central Government.

(5) The Tribunal shall decide both questions of law and facts that may be raised before it."

(underlining supplied)

Service matters" referred to in Section 14 is defined Section 3 (0) as follows:

3. (o) "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 u/s 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 ship 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).

(iii) leave of any kind.

(iv) summary Court Martial except where the punishment is of dismissal or imprisonment for more than three months;

3. I am of opinion that to hold that in respect of appointment and enrolment, Tribunal would not have jurisdiction because the persons seeking appointment and enrolment are not yet subject to the Army Act is a narrow view. In respect of appointment and enrolment also, what is applicable is the Army Act itself. This is fortified by the preamble of the Act which reads thus:

An Act to provide for the adjudication or trial by Armed Forces Tribunal of disputes and complaints with respect to commission, appointments, enrolment and conditions of service in respect of persons subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950 and also to provide for appeals arising out of orders, findings or sentences of courts-martial held under the said Acts and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-eighth Year of the Republic of India as follows:-

Any other interpretation will run counter to the objects and purposes of the Act. Since for deciding the question of eligibility and enrolment what has to be looked into is the Army Act, persons seeking appointment and enrolment would be subject to the Army Act. Moreover, a contrary view would make the words "appointment" and "enrolment" in Section 3 (o) meaningless. Therefore adopting a purposive and harmonious construction of the provisions, I hold that the Armed Forces Tribunal does have jurisdiction to deal with the subject matter of this writ petition, which is the eligibility of the petitioner for enrolment in the Indian Army. Hence, I dismiss this writ petition without prejudice to the right of the petitioner to approach the Armed Forces Tribunal for the reliefs claimed in this writ petition.