

Ex Recruit Himanshu Tewtia vs Union Of India And Ors on 16 January, 2023

Author: Suresh Kumar Kait

Bench: Suresh Kumar Kait, Neena Bansal Krishna

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IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P. (C) 465/2023

EX RECRUIT HIMANSHU TEWTIA

Through:

Mr. Archana Ra

versus

UNION OF INDIA AND ORS

Through:

Mr. Vikrant N.
Tyagi, Ms. Ayu
Gupta, Advocat
Major Partho K

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% 16.01.2023

1. The petitioner vide present petition has claimed the following reliefs :

A. Issue a Writ, Order or direction in the form issuance of a Writ of Certiorari, to quash and set aside the Discharge Certificate issued by JAT Regimental Centre dated 24 July 2020 placed as Annexure P - 1 being without a Show Cause Notice and having been already awarded 7 days' Pay Fine thereby becoming a case of Double Jeopardy in the eyes of law and arbitrary and whimsical on the very face of it, B. Issue a Writ, Order or direction in the form of a Writ of Mandamus by way of directions to the Respondents to reinstate the Petitioner on the ground of having been punished with 7 days' Pay Fine for the offence to meet the ends of equity, justice and fairplay.

C. Pass such other further orders/ directions as deemed just and proper by this Hon 'ble High Court to meet the ends of equity, justice and fair play;

2. Learned counsel appearing on behalf of the respondent has raised a preliminary issue that the petitioner is enrolled in the Army and discharged under the Army rules. Therefore, this Court has no

jurisdiction.

3. It is pertinent to mention here that the petitioner initially approached the Armed Forces Tribunal (AFT) and the Tribunal vide Order dated 16.11.2022 passed the order as under :

"3. Admittedly, from the pleadings available on record, the applicant was a recruit and was not attested and was not within the purview of the Army Act, 1950. That being so, in view of the law laid down by the Full Bench of this Tribunal in the case of Kaptan Singh Vs. Union of India & Ors. [O.A. No. 17 of 2015 and other connected matters] decided on 28.05.2021, this Tribunal does not have jurisdiction to deal with the matter. The applicant will have to take recourse to the remedy available either by approaching the High Court or any other Forum, which would have jurisdiction to deal with the matter.

4. Keeping in view the aforesaid, we dispose of the matter granting liberty to the applicant to take recourse to such remedy as may be available in accordance with law for ventilating his grievances."

4. As stated in the present petition, the petitioner was enrolled on 24.02.2022 and he qualified the Training Test on the fourth week also. Thereafter, he fell sick and being in a very difficult medical condition he became Absent Without Leave (AWL) on 12.05.2020. He went home and was treated there by the Local doctor. Thereafter, his father Naik Pawan Kumar being a retired soldier with exemplary military service, took him to the JAT Regimental Centre, Bareilly. The petitioner pleaded guilty of being Absent Without Leave (AWL) and accordingly he was summarily tried by Training Battalion Commanding Officer Col RJ Rane in the presence of Company Commander of Moscow Company Major Prenal Tiwari, Training Subedar Major Ram Niwas who was officiating as Training SM. The Petitioner pleaded Guilty and was awarded 7 days' Pay Fine. Thereafter, suddenly on 24.07.2020 the petitioner was called and discharged from military service on the ground of "Unlikely to become an efficient soldier". The said punishment is a Double Jeopardy and liable to be struck down under Article 20 and 21 of the Constitution of India.

5. The learned counsel for petitioner has relied upon the case of Kaptan Singh(Supra) by the Full Bench, wherein the case was related to selection/ recruitment. So were the facts before this Court in Cadet Gautam Singh vs. Union of India & Ors. W.P.(C) 11005/2019 decided on 21.10.2019 and in that matter since the respondent had taken the objection that this Court has no jurisdiction and the Armed Forces Tribunal has jurisdiction, the said petition was returned to be tried by the Armed Forces Tribunal. Thus, petitioner has been made a shuttle between two forums with no reprieve from either Forum.

6. In the Administrative Tribunal Act, 1985 the recruitment and matters concerning recruitment has to be challenged before the Central Administrative Tribunal. A reference be made to Section 14 of the Administrative Tribunals Act, 1985, which is reproduced as under :

"14. Jurisdiction, powers and authority of the Central Administrative Tribunal.--

(1) Save as otherwise expressly provided in this Act, the Central Administrative 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 39 [***] in relation to--

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

7. The issue regarding interpretation of Section 14 of the Administrative Tribunals Act, 1985 came up before this Court in Praveen Sharma vs. U.P.S.C W.P.(C) No.498/2006 decided on 20.06.2007 and the relevant paragraphs are as under :

"18. The question that arises in the present case is whether the issues involved herein can be regarded as relating to the examination conducted by the UPSC. This question emerges in the context that there is no challenge to the examination conducted in 2006. Insofar as the 2005 examinations are concerned, that is over. And, the petitioner does not stake any claim in respect thereof because he could not complete that examination as a result of circumstances beyond his control. By way of this petition, the petitioner is seeking a direction from this Court declaring his appearance in the 2005 examination to be disregarded as an attempt. The issue here is not so much with regard to the conduct of the examinations but with regard to the petitioner's eligibility to sit in the examination. Had it been a matter where the examination itself was in question, it would clearly fall within the ratio of the decisions in Pranay Kumar Soni (supra) and Neeraj Kansal (supra), which in turn followed S. Tripathi (supra). Here the issue is with regard to eligibility. In my view, the expression used in Section 14 of the Administrative Tribunals Act, 1985 is not just "recruitment" but "recruitment, and matters concerning recruitment". Had the expression only been "recruitment", there could have been some debate as to whether a condition of eligibility was a part of recruitment. But the expression used in Section 14 is of much wider amplitude inasmuch as it also refers to "matters concerning recruitment". An eligibility condition would definitely, in my view, fall within the scope of this expression. The question in the present writ petition is whether the petitioner was eligible or not to sit for the 2006 examinations. That is certainly a matter concerning recruitment. Accordingly, the Central Administrative Tribunal would, in view of the Supreme Court decision in L. Chandra Kumar (supra), have to function like the court of the first instance with regard to the question of eligibility raised in the present case because this is the precise area of law for which the Tribunal has been constituted, as indicated by Section 14 (1) (a) of the Administrative Tribunals Act, 1985. It would, therefore, not be open to the petitioner to directly approach this Court and, therefore, it would be appropriate if the petitioner is directed to first approach the Central Administrative Tribunal which, indeed, has jurisdiction to adjudicate upon the issue of eligibility raised by the petitioner herein.

19. This petition is, therefore, disposed of with the direction that it would be open to

the petitioner to approach the Central Administrative Tribunal for a determination of his grievance on merits. The precise question being as to whether his appearance in the examinations in 2005 could be regarded as an attempt or not within the meaning of Rule 4 of the CSE Rules, 2005. Since the petitioner has appeared in the Civil Services Examinations held in 2006 and the results have been tabulated but have been placed in a sealed cover with this Court, it would be appropriate to direct that the results, which include the results of other examinees, be declared.

In case the petitioner has failed to qualify in the examinations, then the matters ends there. However, if the petitioner has qualified, assuming that he was eligible, his result shall be operative only and shall be subject to the final decision taken by the Central Administrative Tribunal, in case the petitioner approaches the said Tribunal.

With these directions, this writ petition is disposed of. No costs."

8. Section 3(o) of the Armed Forces Tribunal Act, 2007, is reproduced as under :

"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)

(ii) tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions;"

9. Section 3(o) of the Armed Forces Tribunal Act, 2007 is para materia to Section 14 of the Administrative Tribunals Act, 1985, which provides that the tenure including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions.

10. Admittedly, in the present case vide impugned order dated 24.07.2020 the petitioner has been discharged from Army service under Rule 13(3)(IV) of Army Rule, 1954 w.e.f 24.07.2020 (A/N) on the ground that the petitioner is "Unlikely to become an efficient Soldier".

11. It is not in dispute that the petitioner had been given Army No.3217440W and he was discharged from the service under Rule 13(3)(IV) of the Army Rules, 1954. Once, a candidate is enrolled in the Army and the Army Number is given and action is also taken against the Army Rules, it is the learned Tribunal which shall have the jurisdiction. Thus, we do not agree with the opinion of the learned Tribunal whereby it is observed that in view of judgment of Full Bench of Armed Forces Tribunal (AFT) and the order of this Court, the Tribunal has no jurisdiction.

12. In view of the above discussion and the settled position of the statutory provisions of law, we are of the opinion that the learned Tribunal has the jurisdiction. Accordingly, we hereby dispose of the present petition directing the learned Tribunal to revive O.A.1098/2020 in Re: Ex Recruit Himanshu Tewatia vs. Union of India and dispose of as per law which has been disposed of vide order dated 16.11.2022.

13. As informed by the learned Counsel for the petitioner that similar orders have been passed by the learned Tribunal recently in 3-4 cases. On taking steps by the concerned parties, the said matters shall be revived by the Tribunal accordingly.

14. In view of above, the present petition is disposed of.

SURESH KUMAR KAIT, J NEENA BANSAL KRISHNA, J JANUARY 16, 2023/va