

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 751 of 2014**

C.H. Kodand Rao S/o Shri C.H. Erayya, aged about 40 years, R/o C/o K.C. Naidu, near Convent School Hospital Sector, Dallirajahara, Tehsil-Balod, District Durg, P.S. Balod

---- Petitioner

Versus

1. Union of India through the AMC Centre and School Records, Lucknow-2, C/o 56 APO, Pin No.-900450
2. Lt. Col SRO, for OIC Records AMC Records, Lucknow-2
3. Commanding Officer, Unit-179 MH, C/O-99 APO, Pin No-903179
4. Col Offg Col A (DV) For GOC-in-C Headquarters Eastern Command PIN-908542 C/O 99 APO
5. C.H. Venu, Aged about 28 years, D/o Shri K. Narayan, R/o Gram Gannupalli, P/O Metru via Akkupali, Bajrapkotru, District Shrikakolum, A.P. P.S. Shrikakolum

---- Respondents

For Petitioner	: Mr.Mateen Siddique, Advocate
For Respondents	: Mr.N.K.Vyas, Assistant Solicitor General

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

05/11/2015

1. Lieutenant Colonel/Commanding Officer in exercise of power conferred under Section 91 (i) of the Army Act, 1950 (for short 'the Act of 1950') passed an order of penal deduction from the salary of the petitioner, who is working in the Military Hospital, has filed this writ petition under Article 226 of the Constitution of India questioning the order passed by the said authority.
2. Mr.N.K.Vyas, learned Assistant Solicitor General appearing for

the respondents would submit that the order passed by the competent authority in exercise of powers conferred under Section 19 (i) of the Act of 1950 is “service matters” falling within the meaning of 3(o) of the Armed Forces Tribunal Act, 2007 (for short ‘the Act of 2007’) and therefore, remedy of the petitioner would be to file an application under Section 14(2) of the Act of 2007 before the Armed Forces Tribunal for redressal of his grievances and as such, by virtue of the provisions contained in Section 14(1) of the Act of 2007, the writ petition as framed and filed would not be maintainable and same deserves to be dismissed on the ground of availability of alternative remedy.

3. Mr.Mateen Siddique, learned counsel appearing for the petitioner would oppose the preliminary objection raised by learned counsel for the respondents and submit that the competent authority has simply deducted the amount pursuant to the order of the Family Court and as such, it is not the “service matters” falling within the jurisdiction of the Tribunal constituted under the Act of 2007, therefore, the writ petition would be maintainable.

4. I have heard learned counsel appearing for the parties on the question of maintainability of the writ petition.

5. It is not in dispute that the petitioner is working in Military Hospital and his services are governed by the Act of 1950.

6. The question for consideration would be whether the dispute raised herein is a “service matters” within the meaning of Section 3(o) of

the Act of 2007 as to attract the provisions of the Act of 2007 ?

7. Section 3 (o) of the Act of 2007 defines the “service matters” as under:-

“3(o) “service matters”, in relation to the persons subject to the Army Act, 1950 (45 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 under section 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 postings including the change of place or unit on posting whether individually or as a part of unit, formation or

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

8. At this stage, it would be appropriate to notice Section 91(i) of the Act of 1950, which reads as under:-

“91. Deductions from pay and allowance of persons other than officers.- Subject to the provisions of section 94 the following penal deductions may be made from the pay and allowances of a person subject to this Act other than an officer, that is to say,-

(i) any sum required by order of the Central Government or any prescribed officer to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said Government to the said wife or child.”

9. Section 3 (o) (ii) of the Act of 2007 also includes penal deductions and deduction made under Section 91(i) of the Act of 1950 would thus be penal deduction and would fall within “service matters” as defined in Section 3(o) of the 2007.

10. In the case in hand, the Competent Authority has issued the show-cause notice to the petitioner vide Annexure P/3 for grant of maintenance allowance under Section 91 (i) of the Act of 1950 read with

Rule 193 of the Army Rules and thereafter, passed an order on 28th June, 2013 directed remittance of ₹6151/- per month from January, 2015 in exercise of power conferred under Section 91(i) of the Act of 1950, thus, amount to be deducted from the petitioner's salary is a penal deductions.

11. As per Section 14(2) of the Act of 2007, a person aggrieved by an order pertaining to any service matter may make an application to the Tribunal in such manner as prescribed by the rules of said Tribunal. By virtue of Section 14(1) of the Act of 2007, the Armed Forces Tribunal is constituted and upon constitution, all the jurisdiction, powers and authority, exercisable immediately before that day by the courts (except the Supreme Court or a High Court) shall be exercisable by that Court (Tribunal).

12. The issue raised herein so long res-intergra in a very recently, in the matter of **Union of India and others v. Major General Shri Kant Sharma and another**¹ their Lordships of the Supreme Court while dealing with maintainability of writ petition in the light of remedy available under the Act of 2007 have held that when a statutory forum is created by the law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation and held in paragraph 34 of the report as under:-

34. The aforesaid decisions rendered by this Court can be summarized as follows:

(i) The power of judicial review vested in the High Court under Article 226 is one of the basic essential features of the Constitution and any legislation including Armed Forces Tribunal Act, 2007 cannot override or curtail jurisdiction of the High Court under Article 226 of the Constitution of India (Refer: L. Chandra (AIR 1997 SC 1125) and S.N. Mukherjee (AIR 1990 SC 1984).

(ii) the jurisdiction of the High Court under Article 226 and this Court under Article 32 though cannot be circumscribed by the provisions of any enactment, they will certainly have due regard to the legislative intent evidenced by the provisions of the Acts and would exercise their jurisdiction consistent with the provisions of the Act. (Refer: Mafatlal Industries Ltd.).

(iii) When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. (Refer: Nivedita Sharma).

(iv) The High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance. (Refer: Nivedita Sharma).

13. Following the law laid-down by the Supreme Court in the aforesaid case (supra) and in view of the fact that statutory alternative remedy is available to the petitioner relating to service matter under

Section 14(2) of the Act of 2007 to file an application before the Armed Forces Tribunal, I am inclined to allow the preliminary objection raised by counsel for the respondents.

14. The petitioner having alternative remedy to file an application for redressal of his grievances under Section 14(2) of the Act of 2007, this Court declines to entertain this writ petition on the ground of availability of statutory alternative remedy by making an application under Section 14(2) of the Act of 2007. The petitioner is at liberty to avail such remedy, if so required.

15. With the aforesaid observation, the writ petition stands finally disposed off. No order as to cost(s).

**Sd/-
(Sanjay K. Agrawal)
JUDGE**

B/-