

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

+WRIT PETITION No.41735 OF 2015

% Dated : 30.12.2015

Manoj Kumar (Service No.691785-B),
Rank: Junior Warrant Officer,
S/o. Late Jagdish Prasad VAshisth,
Aged: 51 years, Occ: Serving in Indian Air Firce,
R/o. SNCO Mess, Air Force Station Hakimpet,
Secunderabad – 500 015,
Telangana.

..... Petitioner

AND

\$ Union of India,
Rep. by its Secretary to the Government,
Ministry of Defence,
South Block,
New Delhi – 110 011

\$ Air Officer Commanding,
Air Force Station Hakimpet,
Secunderabad, Telangana – 500 014

\$ Air Officer Commanding
Air Force Record Office,
Subroto Park, New Delhi – 110 010

\$ ACAS (PA & C),
Air Headquarters (Vayu Bhawan),
Rafi Marg,
New Delhi – 110 106

\$ Chief of the Air Staff,
Air Headquarters (Vayu Bhawan),
Rafi Marg,
New Delhi – 110 106

\$ Air Officer Commanding,
20 Wing, A F Station Bagdpgra.
West Bengal – 734 014.

..... Respondents

! Counsel for Petitioner : Sri U.V.S. Laur

**^Counsel for Respondents : Sri B. Narayana Reddy,
learned Assistant Solicitor**

General for Respondents1 to 6

<GIST :

>HEAD NOTE :

? Cases referred :

AIR 1997 Supreme Court 1125
**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

WRIT PETITION No.41735 of 2015

Between:

Manoj Kumar (Service No.691785-B),
Rank: Junior Warrant Officer,
S/o. Late Jagdish Prasad VAshisth,
Aged: 51 years, Occ: Serving in Indian Air Firce,
R/o. SNCO Mess, Air Force Station Hakimpet,
Secunderabad – 500 015,
Telangana.

.. Petitioner

AND

Union of India,
Rep. by its Secretary to the Government,
Ministry of Defence,
South Block,
New Delhi – 110 011 & 5 others

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 30.12.2016

SUBMITTED FOR APPROVAL:

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THE HON’BLE SRI JUSTICE P.NAVEEN RAO

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| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes |
| 2 | Whether the copies of judgment may be marked to Law Reports/Journals | Yes |

3	Whether His Lordship wish to see the fair copy of the Judgment?	Yes
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HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.41735 of 2015

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ORDER:

The petitioner was an Airman. By proceedings, dated 25.04.2014, he was discharged from services as per the provisions of the Armed Forces Rules, 1969, and was transferred to Pension Establishment otherwise than at his own request. Aggrieved by the said order and also seeking consequential benefits, the petitioner filed O.A.No.73 of 2015 before the Armed Forces Tribunal Regional Bench, Chennai. The said case was considered by the Circuit Bench at Hyderabad. It appears from the reading of the order that when the O.A. was taken up for consideration, the Tribunal noticed that the relief sought for by the petitioner cannot be granted since the petitioner did not impeach the punishment against him which was the basis for his discharge. At that stage, learned counsel representing the petitioner sought leave of the Tribunal for withdrawing the O.A. with liberty to file a fresh application. Recording the same, the O.A. was dismissed as withdrawn.

2. Learned counsel for the petitioners informs the Court that the petitioner has since filed O.A. No.121 of 2015 impeaching the punishment imposed against him, however, challenging the very same order of discharge, dated 25.04.2014, this writ petition is filed.

3. Learned counsel for the petitioner would contend that the Tribunal has no jurisdiction to adjudicate the grievance since the petitioner is not covered by definition of "Service matters" as provided in Section 3(o)(iii) of the Armed Forces Tribunal Act, 2007 (for short, 'the Act'), and, therefore, this writ petition is filed.

4. To appreciate the said contention, the definition "Service Matters" as defined in the Act is considered. Section 3(o) of the Act reads as under:

"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 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) Summary Court Martial except where the punishment is of dismissal or imprisonment for more than three months."

5. From a bear reading of this definition, it is clear that 'Service Matters' would mean all matters relating to the conditions of service of

persons, who are governed by the Army Act, Navy Act and Air Force Act. The definition provided is very wide and covers all matters relating to the conditions of service including the present grievance of the petitioner. In fact, the petitioner has invoked the jurisdiction of the Tribunal in the first instance. He withdrew the O.A. only in order to come out with a better application. The issue of maintainability of the O.A. was not considered by the Tribunal and was not dismissed on the ground as sought to be projected in this writ petition. Thus, there is no merit in the contention of the petitioner that since dismissal is not awarded against him, the Tribunal does not have jurisdiction.

6. As held by the Supreme Court in

L. Chandra Kumar Vs. Union of India and others^[1], Tribunal constituted under Special Enactment is a Court of first instance dealing with the subject matters entrusted to such Tribunal and an aggrieved person has to first invoke the jurisdiction of the said Tribunal ventilating his grievance and cannot directly invoke the jurisdiction of High Court under Article 226 of the Constitution of India. The Armed Forces Tribunal is established under the Armed Forces Tribunal Act, 2007, and is a special Tribunal exclusively vested with jurisdiction to adjudicate service grievances of persons governed by Army Act, Navy Act and Air Force Act. Therefore, it is an effective and efficacious adjudicating forum. The petitioner cannot directly invoke the jurisdiction of this Court without availing the said remedy.

7. Hence, the Writ Petition is dismissed, leaving it open to the petitioner to avail the remedy as available under the Armed Forces Tribunal Act, 2007. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

P.NAVEEN RAO, J

Date: 30th December, 2015

Note: LR Copy to be marked.

(B/o.)
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WRIT PETITION No.41735 of 2015

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Date: 30th December, 2015

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[\[1\]](#) AIR 1997 Supreme Court 1125