

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 8966 OF 2015

Gaykar Sadanand Ramdas

.....Petitioner

V/s.

Col Vivek Pandit and Ors

....Respondents

Mr. Col. R. K. Rai Advocate for Petitioner.

Mr. Anil Singh senior Advocate/ASG a/w Mr. A. M. Sethna a/w Mr. G. Hariharan a/w Mr. A. A. Ansari a/w Ms. Indrayani Deshmukh i/b Mr. Arun Kumar Roy for Respondent nos. 3 to 8.

**CORAM : NARESH H. PATIL &
Z. A. HAQ, JJ.**

DATE : 14th SEPTEMBER 2017.

P.C. (Per: Z. A. Haq, J.)

1 Heard.

The petitioner who was enrolled in the Territorial Army on 31/01/2000 and continued in the employment till he was discharged in March 2014, seeks writ of *mandamus* directing the respondents to reinstate him in service with consequential benefits. The petitioner has prayed for ancillary reliefs.

2 Respondent no. 8-Union of India raised preliminary objection that the petition need not be entertained by this Court as the petitioner has alternate

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statutory remedy available under section 14 of the Armed Forces Tribunal Act, 2007.

3 The Advocate for the petitioner argued that as the petitioner had been enrolled in the Territorial Army, he cannot approach the Tribunal under section 14 of the Armed Forces Tribunal Act, 2007. To support his submission, the learned Advocate submitted that though section 2 (1) (e) of the Army Act, 1950 lays down that the officers of the Territorial Army shall be subject to the Army Act, 1950, there is a rider that it will be subject to such adaptations and modifications as may be made in the application of the Army Act 1950 to such persons under sub section 1 of section 9 of the Territorial Army Act, 1948. Referring to the provisions of Section 9 (1) of the Territorial Army Act 1948, it is submitted that an officer or person enrolled with the Territorial Army will be subject to the Army Act 1950, subject to such adaptations and modifications as may be made by the Central Government by notification in the official gazette and rules and regulations made in the Army Act, 1950 shall apply in the same manner and to the same extent as if such officer or enrolled person held the same rank in the regular Army. To substantiate his submission, the

Advocate for the petitioner relied on Rule 24 of the Territorial Army (Amendment) Rules 1964 and Schedule (II) of the above mentioned Rules. It is argued that clause 1 of Schedule (II) states that sections 2, 4 to 8, 13 to 22 and 24 shall be omitted. It is submitted that clause 3 of Schedule (II) lays down that subject to the provisions of section 73 of the Army Act, 1950, punishment awarded for any of the military offences under the Army Act, 1950, except those under section 34, 37 and 49 of the Army Act, 1950 shall not exceed a term of imprisonment for a period of 6 months. The other clauses of Schedule (II) are also referred to point out that there is vast difference in the service conditions of the officers and persons enrolled with Territorial Army and the officers attached to the regular Army. The advocate for the petitioner has referred to an order passed by the Armed Forces Tribunal Kolkata and has submitted that in the case of an officer enrolled with the Territorial Army, the Tribunal has held that it has no jurisdiction.

4 The learned ASGI has relied on the provisions of Section 2 (1) (e) of the Army Act, 1950 and section 14, 3 (o) of the Armed Forces Tribunal Act, 2007 and has submitted that on harmonious reading of the above provisions, it is

clear that all disputes relating to the service matters in relation to the persons subject to the Army Act, 1950, including officers enrolled with the Territorial Army, will have to go to the Tribunal and as alternate statutory remedy is available to the petitioner, this Court need not entertain the writ petition. It is further submitted that the petitioner has not been able to make out any exceptional case which necessitates invoking of extra ordinary jurisdiction under Article 226 of the Constitution of India by this Court. It is prayed that the petition be transferred to the Tribunal.

5 Section 2 (1) (e) of the Army Act, 1950 reads as under:

*“2. **Persons subject to this Act** – (1) The following persons shall be subject to this Act wherever they may be, namely:-*

(a)

(b)

(c)

(d)

(e) officers of the Territorial Army, when doing duty as such officers, and enrolled persons of the said Army when called out or embodied or attached to any regular forces, subject to such adaptations and modifications as may be made in the application of this Act to such persons under sub-section (1) of section 9 of the Territorial Army Act, 1948 (56 of 1948).”

Section 3 (o) of the Armed Forces Tribunal Act, 2007 reads as under:

(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 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.

Section 9 (1) of the Territorial Army Act 1948 reads as under:

“9. Application of the Army Act, 1950.—(1) Every officer, when doing duty as such officer, and every enrolled person when called out or embodied or attached to [the Regular Army], shall, subject to such adaptations and modifications as may be made therein by the Central Government by notification in the Official Gazette, be subject to the provisions of [the Army Act, 1950] and the rules or regulations made thereunder in the same manner and to the same extent as if such officer or enrolled person held the same rank in the Regular Army as he holds for the time being in the Territorial Army.”

Rule 24 of the Territorial Army (Amendment) Rules 1964 reads as under:

“24. Application of the Army Act, 1950, to enrolled persons - (i) The Army Act, 1950, and the rules and regulations made thereunder in their application to enrolled persons of the Territorial Army during training shall, subject to the provisions of sub-rule (2), be modified in the manner and to the extent specified in Schedule II in the case of males and Schedule IIA in the case of females.

(2) Enrolled persons not being females who are serving on the permanent staff of a unit or are undergoing training at the National Defence Academy shall be subject to the said Act and the rules and regulations made thereunder without any modifications.”

6 After examining the above provisions, it is clear that officers of the

Territorial Army when doing duty as such officers and enrolled persons of the said Army i.e. the Territorial Army are subject to the Army Act, 1950, however, subject to such adaptations and modifications as may be made in the application of the Army Act, 1950 to such persons as per section 9 (1) of the Territorial Army Act, 1948.

Section 9 (1) of the Territorial Army Act, 1948 also lays down that every officer of the Territorial Army or other enrolled person when called out or embodied or attached to the regular Army shall be subject to the provisions of the Army Act, 1950.

Section 14 of the Armed Forces Tribunal Act, 2007 lays down that the Tribunal shall exercise jurisdiction, powers and authority in relation to all service matters and section 3 (o) of the Armed Forces Tribunal Act, 2007 provides that termination of service of a person subject to the Army Act, 1950 will fall within the purview of “service matters”. Thus, we find that the grievance of the petitioner is required to be considered by the Tribunal. The learned ASGI has rightly relied on the order passed by the Armed Forces

Tribunal, Regional Bench Guwahati in **Ex Hav Santosh Khanikar Vs. The Union of India and others** reported in [TA 01/2014 (AOO WP (C) No. 2540/2013)]. The submissions made by the learned Advocate for the petitioner relying on Rule 24 of the Territorial Army (Amendment) Rules 1964 and Schedule (II) are not relevant as they are dealing with other service conditions of the officers/enrolled persons of the Territorial Army.

7 Hence the following order:

ORDER

The writ petition is dismissed with liberty to the petitioner to avail appropriate remedy before the Armed Forces Tribunal, if so advised.

We have not dealt with the merits of the matter and they are kept open for consideration by the Tribunal.

In the circumstances, the parties to bear their own costs.

[Z. A. HAQ, J.]

[NARESH H. PATIL, J.]