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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 9141/2018 and CM APPL. Nos.35248-250/2018
MAJ RUBINA KAUR KEER Petitioner
Through: Ms. Neela Gokhale and Ms. Ilam Paridi,
Advocates.
versus
UNION OF INDIA AND ORS. Respondents
Through: Mr. Sanjeev Narula, CGSC with
Mr. Shravan Kumar Shukla, Advocate.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE REKHA PALLI

ORDER
% **30.08.2018**

1. The present petition has been listed by the Registry subject to office objections with regard to its maintainability in the High Court.
2. The present writ petition has been filed by a lady officer of the Indian Army with the following prayers:-

“A. Issue a writ of mandamus or any other writ or appropriate orders/directions of like nature, declaring that any matter of personal relationship of a person subject to the Army Act, 1950 shall not fall within the scope and ambit of an ‘offence’ as contemplated under Section 63 of the Army Act, 1950 as it is unconstitutional and violative of Article 14 and 21 of the Constitution of India;

B. Issue a writ of certiorari or any other writ or appropriate orders/directions of like nature, quashing all decisions to initiate disciplinary actions against the Petitioner for allegedly having illegitimate relationship with another officer of the Indian Army and under the provisions of Section 63 of the Army Act in that regard.”

3. At the outset, we have requested learned counsel for the petitioner to address us on the maintainability of the writ petition in the light of provisions of the Armed Forces Tribunal Act, 2007, which *inter alia* provides for adjudication by the Armed Forces Tribunal in respect of disputes and complaints relating to the commission, enrolment and conditions of services in respect of persons subject to the Army Act.

4. Learned counsel for the petitioner while conceding that the relief sought in the present petition relates to service conditions of the petitioner, who is an officer subject to Army Act, but contends that the present case raises issues relating to the petitioner's right to life, liberty including the right to privacy, which have been violated by the decision of the respondents in treating even matters relating to personal relations of officers, within the scope and ambit of an offence as contemplated under Section 63 of the Army Act, 1950. She submits that this action of the respondents is violative of Articles 14 and 21 of the Constitution of India and therefore only the writ court would be the appropriate forum to decide the issues raised in the present petition.

5. Before dealing with the submissions made by learned counsel for the petitioner, it would be appropriate to refer to Section 3(o) & Section 14 of the Armed Forces Tribunal Act, which deal with the scope of jurisdiction of the Armed Forces Tribunal and read as:

“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 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;*

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- 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 commissions 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 ex parte; 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.”

6. The aforesaid provisions leaves no manner of doubt that all matters relating to the service conditions of a person subject to the Army Act, unless they fall in the exemption clause, would be subject to the exclusive jurisdiction of the Armed Forces Tribunal.

7. Having considered the nature of the relief sought in the present petition, we have no manner of doubt that the matter falls squarely within the ambit of the term ‘service matters’, as defined under Section 3(o) of the Armed Forces Tribunal Act and would therefore fall within the jurisdiction of the Tribunal. Once a statutory forum has been created by law for redressal of specific grievances of parties subject to Army Act, there is no reason as to why the petitioner should not approach the Tribunal with the grievances raised in the present petition.

8. We find no merit in the submission of the learned counsel for the petitioner that merely because she seeks to challenge the disciplinary action proposed against her as being unconstitutional and violative of Article 14 and 21 of the Constitution of India, the Tribunal would not be vested with the jurisdiction to entertain the same or that it would not be a convenient forum to challenge the constitutionality of the respondents’ action. The principle that a statutory Tribunals would be competent to entertain a challenge to the vires of the statutory legislation stands adequately settled by the landmark decision of the Supreme Court in L. Chandra Kumar Vs. Union of India reported as **(1997) 3 SCC 261**.

9. Accordingly, the present petition alongwith the pending applications is dismissed with liberty granted to the petitioner to approach the Armed Forces Tribunal for the same relief, as prayed for in the present petition.

REKHA PALLI, J

HIMA KOHLI, J

AUGUST 30, 2018na/rkb
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