

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4321 of 2022

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1. Rishi Ranjan Kumar Son of Mithilesh Sharma Resident of Village - Gosai Manjha, P.O. - Ganeshtan majha, P.S. Phulwariya, District- Gopalganj.
 2. Manikant Pathak Son of Beyas Pathak Resident of Village - Gosai Majha, P.O. - Ganeshtan Majha, P.S. Phulwariya, District- Gopalganj.
 3. Pankaj Kumar Dwivedi Son of Yaduvansh Dubey Resident of Village - Panti, P.O. - Belain Nabinagar, P.S. - Nabinagar, District- Aurangabad.
 4. Suman Choubey Son of Om Prakash Choubey Resident of Village - Rusulpur, P.O. - Bhikahanpur, P.S. Ahiyapur, District- Muzaffarpur.
 5. Amit Kumar Mishra Son of Anant Mishra Resident of Village and P.O. - Purana Bhojpur, P.S. - Dumraon, District- Buxar.

... .. Petitioner/s

Versus

1. The Union of India Through the Ministry of Defense, South Block, New Delhi.
2. The Secretary, Ministry of Defense, Union of India, South Block, New Delhi.
3. Additional Directorate General of Recruiting, RTG- 6, AGs Branch West Block - III RK Puram, New Delhi - 110066.
4. The Major, Officiating Director Recruiting, Army Recruiting Office, Hedquarter Recruiting Zone, Danapur Cant, Danapur, Patna, Bihar - 801503.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Kumar Kaushik, Advocate
For the Respondent/s : Mr. Additional Solicitor General

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 09-05-2022

Heard learned counsel for the respective parties.

2. In the instant case, petitioners have prayed for the following relief/reliefs:



“i. For issuance of an order, direction or a writ of certiorari for quashing the orders dated 19.01.2022 contained in Annexure P14A and P14B whereby and where under the petitioners (petitioner number 1 and 5) have been rendered ineligible and their candidature has been cancelled against advertisement dated 09.01.2021 published by the respondent authorities for appointment to the post of ‘Religious Teacher’ in the Indian Army on the ground that they do not meet educational criteria despite the fact that the petitioners’ qualification is approved by the UGC and also accepted by the Central Government for the purposes of employment.

ii. For issuance of an order, direction or a writ of mandamus for directing the respondent authorities to allow the writ petitioners to participated in the selection process being conducted in pursuance of advertisement dated 09.01.2021 issued for appointment to the post of ‘Religious Teacher’ in the Indian Army.

iii. For issuance of an order, direction or an appropriate writ for staying the further recruitment process against the advertisement dated 09.01.2021 issued for appointment of ‘Religious Teacher’ in the Indian Army during the pendency of the writ application.

And/or

iv. For issuance of an order, direction or an appropriate writ for directing the respondent authorities to allow the petitioners to participate in the further recruitment process against the advertisement dated 09.01.2021 issued for appointment to the post of ‘Religious Teacher’ in Indian Army subject to the result of the present writ application.”



3. Grievance of the petitioners is in respect of selection and appointment to the post of Religious Teacher in the Indian Army. Question for consideration is whether this Court has a jurisdiction to entertain the present petition when the petitioners have statutory remedy before the jurisdictional Armed Forces Tribunal or not?

4. Learned counsel for the petitioners vehemently contended that Armed Forces Tribunal has no jurisdiction to entertain the petitioners' grievance for the reasons that Armed Forces Tribunal could entertain the application or a petition only to such of those persons who are already in Armed Forces. The petitioners have not yet entered the Armed Forces services, therefore, Armed Forces Tribunal has no jurisdiction to entertain the petition in the light of Section 2 of the Armed Forces Act 1950.

5. Before advertng to the facts of the case, it is necessary to take note of Sections, 14, 39 and 40 of the Armed Forces Tribunal Act, 2007 (Act, 2007). The aforesaid Sections reads as under:

14. Jurisdiction, powers and authority in service matter-

(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 articles



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 sections 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.

39. Act to have overriding effect.- *The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.*

40. Power to remove difficulties.- *(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty.*

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

6. Section 2 of the Armed Forces Tribunal Act, 2007 reads as under:

2. Applicability of the Act – *(1) The provisions of this Act shall apply to all 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).

(2) This Act shall also apply to retired personnel subject to the Army Act 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1959 (45 of 1950) including their dependants, heirs and successors, in so far as it relates to their service matters.

7. Armed Forces Tribunal Act, 2007 is relating to constitution of Tribunal and dealing with service matters of the Armed Forces. Section 14 empowers the Tribunal to decide service matters. Service matters commences from the date of issuance of advertisement to any of the post in the Armed Forces including subject matter of a post namely Religious Teacher in the Indian Army.

8. Section 14 of the Armed Forces Tribunal Act, 2007 cannot be side tracked in view of Section 2 for the reasons that Armed Forces Act 1950 is relating to activities of each Armed Forces. In respect of service matter in the Armed Forces personnel including the stage of advertisement till retirement were required to be initially agitated under Section 14 of the Armed Forces Tribunal Act, 2007 before the jurisdictional Tribunal. In fact, Section 14 exclude the jurisdiction under Articles 226 and 227 of the Constitution in relation to all service matters. One must



understand all service matters including process of recruitment to any post in the Armed Forces.

9. Apex Court in the case of ***Union of India and Others vs. Major General Shri Kant Sharma and Another*** reported in **(2015) 6 Supreme Court Cases 773**, Para 7 has held as under:

“The Armed Forces Tribunal Act, 2007

7. The Armed Forces Tribunal Act, 2007 has been enacted to provide for adjudication or trial by the Armed Forces Tribunal of disputes and complaints with respect of commission, appointments, enrolment and conditions of service in respect of persons subject to the Army Act, 1950; the Navy Act, 1957 and the Air Force Act, 1950 and also to provide for appeals arising out of orders, findings or sentences of court martial held under the said Acts and for matters connected therewith or incidental thereto.”

10. In the light of the above facts and circumstances, present petition is not maintainable. Accordingly, the present petition stands dismissed for want of jurisdiction.

11. Petitioners are at liberty to prefer petition or application before the appropriate forum.

12. At this juncture, learned counsel for the petitioners further submits that this Court is required to take note of Section 3



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

3. Definitions- (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;



13. Section 3 (o) (ii) deals with appointment. The present matter related to appointment to the post of Religious Teacher in the Indian Army, therefore, the aforesaid contention stands rejected.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	14.05.2022
Transmission Date	

