

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5730 of 2022

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Vishal Kumar S/o Amarjeet Kumar, R/o Village - Kinjar, Post - Kinjar,
District - Arwal, Bihar - 804423.

... .. Petitioner/s

Versus

1. The Union of India through the Defense Secretary, Ministry of Defense, Government of India, New Delhi.
2. The Central Airmen Selection Board Brar Square through its Chairman, New Delhi 110010.
3. The Air Force Station Bagdogra, Distt. Darjeeling, West Bengal through its Regional Director, Air Force Station Bagdogra.
4. President Medical Board Centre, 5 Wing, Air Force Station Bagdogra, Distt. Darjeeling, West Bengal.
5. President, Appeal Medical Board, Air Force Station Bagdogra, Distt. Darjeeling, West Bengal.
6. Group Captain Personnel Airmen- I, Air Headquarters, Vayu Bhawan, New Delhi.
7. Abhishek Kumar, S/o Deepak Kumar, R/o Village- Chandi Rukhai, P.S. - Chandi, District - Gaya, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Niranjana Kumar, Advocate Mr. Kumar Kishan, Advocate
For the Respondent/s	:	Mr. Ratnesh Kumar, CGC Mr. Kautilya Kumar Prasad, JC to CGC

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT
Date : 09-05-2022

Heard learned counsel for the respective parties.

2. In the instant petition, petitioner has prayed for the following relief/reliefs:

“(i) For issuance of appropriate writ/writs,
order/orders or direction to the responsible respondents
to bring on record and set aside the impugned Medical
Unfitness Certificates dated 06.01.2020 and



27.01.2020 issued by the respondents for the post of Airmen (Group-X) in the Indian Air Force.

(ii) For issuance of writ in the nature of mandamus for direction and commanding to the responsible respondents to conduct Re-Medical Examination by the Independent Team of Doctors at any place of choice of the respondents for appointment of the petitioner for the post of Airman in the Indian Air force.

(iii) For a direction to the responsible respondents to constitute a Medical Examination Board for conducting the re-medical Examination of the petitioner, who is an applicant for the post of Airmen group 'X' published vide the Intake/Notification / Advertisement no. 02/2020 issued by the Indian Air force, Government of India, New Delhi.

(iv) And further any appropriate writs, orders or directions as Your Lordship/s may deem fit in light of the facts and circumstances of the present case.”

3. Today morning in writ petition, C.W.J.C. No. 4321 of 2022, this Court has elaborately discussed relating to maintainability of the petition in respect of selection and appointment to any of the post under the Armed Forces. In the decided case, matter relates to selection and appointment to the post of Religious Teacher in the Indian Army whereas in the present case, matter relates to selection and appointment to the post of Airmen (Group – X) in the Indian Air Force.



4. The provisions of Armed Forces Tribunal Act, 2007 read with the Army Act, 1950 has been taken note of and dealt in the aforesaid case in respect of jurisdiction of this Court in particularly Section 14 read with Section 3 (o) (ii) to the extent that this Court has no jurisdiction in respect of selection and appointment to any of the post in the Armed Forces.

5. Section 3 (o) (ii) of the Armed Forces Tribunal Act, 2007 (for short 'Act, 2007) is relates to tenure, including commission, appointment etc. The present case is relating to appointment to the post of Airmen. Therefore, selection and appointment to any of the post in the Armed Forces would fall in service matters as narrated in Section 3 (o) of the Act, 2007. In terms of Section 14 (2) of the Act, 2007, a person aggrieved by an order pertaining to any service matter may make an application to the Tribunal in such manner as stipulated by the Rules of the Armed Forces Tribunal (for short 'AFT'). It is to be noted that by virtue of Section 14 (1) of the Act of 2007, Armed Forces Tribunal is constituted and upon constitution, all the jurisdiction, powers, authority exercisable immediately before that day by the Courts (except the Supreme Court or a High Court shall be exercised by that Court (Tribunal)).

Underline supplied



6. The issue involved herein so longer *res integra* in the decision of ***Union of India and others vs. Major General Shri Kant Sharma and another*** reported in **(2015) 6 Supreme Court Cases 773** 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:-

(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.

Following the law laid-down by the Supreme Court in the Section 14 (2) of the Act of 2007 to file an application before the Armed Forces Tribunal, this Court inclined to allow the preliminary objection.

The petitioner having alternative remedy to file an application for redressal of his grievance 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.



7. Accordingly, the present petition stands dismissed.
Reserving liberty to the petitioner to approach jurisdictional forum.

8. At the stage, learned counsel for the petitioner submitted that limitation would come in the way of approaching jurisdictional forum. If the petitioner files petition/application before the jurisdictional forum, the jurisdictional forum is hereby directed to take note of Section 14 of the Limitation Act for the purpose of condonation of delay in filing petition/application before the jurisdictional forum.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	14.05.2022
Transmission Date	

