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Ct.2.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 11960 of 2026

Md. Asraful Molla
Versus
Union of India & Ors.

Mr. Sabir Ahmed
Md. Abdur Rakib
Mr. Mojahid Mehedi
Mr. Quazi Ezaz Ahmed
... For the petitioner.

Mrs. Reshmi Bothra
Mrs. Sumita Sarkar
Mrs. Supriya Harsha
Ms. Anshu Shaw
... For Union of India.

Col. J.G. Manhas
Maj. Hitisha Rawal
... For the respondent nos. 2 to 7

1. Affidavit of service as filed in Court today on behalf of the writ petitioner is taken on record.
2. The writ petitioner and the respondent authorities are represented by their respective counsels.
3. In this writ petition the subject matter of challenge is the order of invocation dated 18th May, 2026, issued under Section 123 of the Army Act, 1950.
4. At the time of hearing, the learned counsel appearing on behalf of the writ petitioner submitted before this Court that the writ petitioner retired long back and by issuing the impugned order of revocation the respondent authorities are making an attempt to jeopardize the writ petitioner.

5. Learned counsel appearing on behalf of the respondent authorities, however, disputed the contention of the writ petitioner. It is submitted that in view of the provisions of Section 3(o) read with Section 14 of the Armed Forces Tribunal Act, 2007 (Act, 2007 in short), the instant writ petition is not maintainable.

6. In order to determine the point of maintainability, this Court at the very outset proposes to look to Section 3(o) of the Act, 2007 which 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;

7. Section 14 of the Act, 2007 reads as under.

“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 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).....

(4).....

(5) The Tribunal shall decide both questions of law and facts that may be raised before it”

8. On a careful perusal of the aforementioned legislative provisions if I look to the facts and circumstances as involved in the instant writ petition, it appears that the impugned order of invocation was issued by the respondent authorities under Section 123 of the Army Act, in connection with an action of the writ petitioner while he was in service and therefore the subject matter of the instant writ petition very much comes under the provisions of Section 3(o) of Act, 2007.

9. In view of the aforementioned observation, this Court is constraint to hold that the instant writ petition is not maintainable before this Court. However, this order will not prejudice the writ petitioner to approach the Armed Forces Tribunal to ventilate its grievance and in the event, such approach is made within fifteen working days from date, the said Tribunal shall not consider the said application as a delayed application.

10. It is further made clear that in the event it is found that the Armed Forces Tribunal is not functioning effectively, liberty is given to the writ petitioner to approach this Court to ventilate his grievances on the selfsame cause of action.

10. With the aforementioned observations and directions the instant writ petition is disposed of.

11. The parties shall act on the basis of the server copy of this order duly downloaded from the official website of this Court.

(Partha Sarathi Sen, J.)