

ARMED FORCES TRIBUNAL:REGIONAL BENCH:JAIPUR

TA No.37/2009
(W.P 12610/2008)

Ex.CMD(OG) Shish Ram

....Petitioner

Versus

UOI & Ors.

....Respondents

For petitioner : Mr.R.S. Bhadauria, Advocate
For respondents : Mr.Asiam Khan, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL HALI, MEMBER.(J)
HON'BLE DR. JUSTICE(Mrs) MEENA V.GOMBER, MEMBER(J)
HON'BLE LT.V.K.AHLUWALIA, MEMBER.(A)

ORDER
23.9.2015

By Justice Sunil Hali

In terms of the reference made by the Regional Bench of Armed Forces Tribunal, Jaipur, the matter has come up before us to address the controversy as to whether the applicant, who was working as Civil Motor Driver is amenable to the Army Act of 1950. Necessity to make a reference to the Full Bench was on account of the conflicting judgment of the Regional Bench of the Armed Forces Tribunal, Chandigarh and Regional Bench of Armed Forces Tribunal, Jaipur. The point of reference is as to whether the applicant is subject to the Army Act of 1950 or not?

2. The petitioner was appointed as Cleaner and consequently promoted to the post of Civil Motor Driver w.e.f. 01.01.1995. He was discharged from the service on administrative grounds for having incurred more than four red ink entries in his service records. The red ink entries were awarded u/s 63 of the Army Act. He was awarded various punishments for having incurred red ink entries under the Army Act. He questioned the order before the Central Administrative Tribunal

(CAT), Jaipur Bench. The OA was dismissed on the ground that under SRO 122 dated 22.07.1950, the employees of Civil GT Company and Independent Transport Platoon (Civil GT) are governed by the Army Act,1950, as such the CAT has no jurisdiction to decide the application of the petitioner. While rejecting the contention of the petitioner, the CAT observed that u/s 2 sub clause (1)(i) the petitioner was subject to the Army Act . For facilitation of reference section2 sub clause (1)(i) is reproduced herein below:

(1) The following personnel shall be subject to this Act, wherever, they may be, namely:-

(a) to (g).....

(i) Persons not otherwise subject to military law who on active service, in c amp, on the march or at any frontier post specified by the Central Government by notification in this behalf.

3. The CAT also observed that the format of the appointment letter clearly envisages that the service of the petitioner will be

(a) governed by the terms and conditions of AI 182/51

(b) Subject to Army Act,1950 for the purpose of discipline.

4. Being aggrieved by the order of the CAT, the petitioner filed a writ petition before the Rajasthan High Court at Jaipur. After coming into force of the Armed Forces Tribunal Act,2007, the matter was transferred to the Regional Bench of the AFT, at Jaipur by the High Court on 09.11.2009. Under these circumstances, the matter was posted before this bench.

5. In the petition the objection was raised by the learned counsel for the respondents that the tribunal has no jurisdiction to decide the matter in view of the Army Instructions 1951 and the appointment letter

of the applicant. A copy of the order passed by the Chandigarh Bench in OA No.1876/2011 was produced which held that the Tribunal had no jurisdiction to entertain the petition as the civil drivers were not subject to the Army Act. Conflicting judgment of the Jaipur Regional Bench in Bhagirath Singh Vs. Union of India concluded otherwise by stating that the applicants were subject to the Army Act. Faced with the two conflicting judgment on the issue, the tribunal on 31.07.2014 passed a detailed order directing to constitute a larger Bench to resolve the issue in the face of two conflicting judgments on the point. Under these circumstances the present case has been referred to the full bench.

6. Before adverting to the controversy involved , it is necessary to understand the import of the petitioner's appointment order. Format of the appointment order regarding appointment as Driver (OG) clearly mentioned that it will be governed by SRO 122 dated 27.07.1950 as amended by SRO 282 dated 19.08.1960 which reads as under:

"S.R.O-122- In exercise of the powers conferred by sub-section (1) of Section 4 of the Army Act,1950(XLVI of 1950) and in supersession of the notification of the Government of India in the late War Department, No.1584, dated the 29th June, 1946, the Central Government is pleased to apply all the provisions of the said Act to Civil General Transport Companies and Independent Transport Platoon Companies (Civ.GT) being force raised and maintained in India under the authority of the Central Government".

7. The import of the SRO clearly envisages that the provisions of Army Act were made applicable to the Civil General Transport Companies and Independent Transport Platoon being force raised and maintained in India under the authority of the Central Government. These persons were on active service with the Army. The appointment order of the petitioner contemplated that he had to be governed by Army Instructions 182/51 as amended in 1960.

8. In terms of the definition u/s 2 sub clause (1) (i) of the Army Act, all those persons who were not otherwise subject to the military law who, on active service, in camp, on the march or at any frontier post specified by the Central Government by notification in this behalf, are employed by, or are in the service of, or followers of, or accompany any portion of, the regular Army would be subject to the Army Act. Section 2 (i) clearly contemplates that those persons who were not subject to the military law are deemed to be governed by Army Act, if they are on active service and attached with the regular Army. The definition of the section clearly leaves no scope for any other interpretation except the fact that the petitioner was subject to the Army Act in terms of sub clause 1(i) of section 2 of the Army Act. The CAT of the Jaipur Bench clearly while relying upon the judgment of R. Viswan and others Vs. Union of India and others, AIR 1983 SC 658 held that the petitioners, who were civilian General Transport Drivers were subject to the Army Act. The apex court while dealing with the case of the Civil members of the GREF held that the members of the GREF are the members of the Armed Forces even though they are not attested or enrolled under Army Act. In Bhagirath Singh Jat Vs. UOI the matter was initially agitated by the petitioner before the CAT who refused to entertain the same as the Tribunal found that they are subject to Army Act. An application was filed before the AFT, Jaipur Bench who entertained the petition and decided on merits. Against this order, review was preferred by the petitioner which was again dismissed on merit. While dismissing the review the Tribunal observed that it had the jurisdiction to entertain the petition as according to SRO 122 of 1950 as amended vide SRO 282 dated 17.08.1960, it has been made clear that provisions of Army Act have been made applicable to civil GT company being a force raised and maintained in India under the authority of Central

Government. The tribunal clearly held that the petitioners were governed by the Army Act.

9. On the contrary, Chandigarh Bench of this Tribunal held that the civil drivers were not subject to the Army Act. The premises on which the judgment was given was that the petitioners were not "enrolled or attested" under the Army Act and Rules. The Bench further observed that that the services of the petitioners, therefore, could not have been terminated under Army Rule 13 as they are neither enrolled nor attested under the Army Act. It has also been observed by the Bench that persons subject to the Army Act, who are enrolled and attested serve for a period of 17 years. While the civil drivers superannuate at 58/60 years of age which clearly indicates that they are not subject to the Army Act. For the purpose of retirement, they are governed by the CCA rules 1956.

10. While perusing the judgment of the Tribunal, we observe that the Tribunal had not taken into account section 2(1)(i) of the Army Act which clearly states that the persons not otherwise subject to military law who on active service, in c amp, on the march of at any frontier post specified by the Central Government by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, the Regular Army are governed by Army Act. Clause (i) of sub clause 2(i) is an exception to the general rule as it includes those persons subject to the Army Act who are not governed by the military law. The application of Army Act has been extended to them for being on active service with the Army.

11. Therefore, merely because they are not enrolled or attested in terms of the Army Act would not disentitle them to the protection of the Army Act. They are included in the category of persons who are subject to the Army Act by virtue of statute. Therefore, it is not

necessary that they should have been enrolled or attested as per Army Act and Rules. It is by virtue of statutory provisions that they are deemed to be governed by Army Act on account of being on active service with the Army at the frontier post specified by the Central Government by notification in this behalf. The limited application of the Army Act only for the purpose of discipline would not take away the petitioner out of the purview of section 2(1)(i) of the Army Act. It is by operation of the statute that they are governed by Army Act. Therefore, we are inclined to agree with the view taken by the Regional Bench of Jaipur holding that the petitioners are subject to the Army Act. The reference is answered accordingly.

52	✓	×	×	52	×	×	×
(LT. GEN. V.K. AHLUWALIA)	(MEEŅA V. GOMBER)	(SUNIL HALI)					
MEMBER (A)	MEMBER (J)	MEMBER (J)					

Jaipur
28.09.2015