

COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

1.

OA 17/2015 (RB, Jaipur)

Kaptan Singh

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Devi Singh Choudhary, Advocate
For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate

2.

OA 55/2014 (RB, Jaipur)

Rajat Kumar Sharma

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Arun Singh Shekhawat, Advocate
For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate

3.

OA 58/2015 (RB, Jaipur)

Mahesh Singh

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri S.B. Singh, Advocate
For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate

4.

OA 66/2015 (RB, Jaipur)

Dhara Singh Gurjar

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri K.C. Sharma, Advocate
For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate

5.

OA 72/2015 (RB, Jaipur)

Manjeet Kumar

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri P.S. Rathore & Shri Yogendra Singh, Advocates
For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate

6.

OA 82/2015 (RB, Jaipur) V/s UOI & Ors.

Ompal Singh ... **Applicant**

Versus

Union of India & Ors. ... **Respondents**

For Applicant : Shri Ved Prakash, Advocate
For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate

7.

OA 105/2014 (RB, Jaipur)

Smt. Madina Bano & Ors. ... **Applicant**

Versus

Union of India & Ors. ... **Respondents**

For Applicant : Ms. Savita Singh, Advocate
For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate

8.

OA 136/2015 (RB, Jaipur)

Dashrath Singh Rathore ... **Applicant**

Versus

Union of India & Ors. ... **Respondents**

For Applicant : Shri R.S. Bhadauria, Advocate
For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate

9.

OA 256/2015 (RB, Jaipur)

Shankar Lal Mandia ... **Applicant**

Versus

Union of India & Ors. ... **Respondents**

For Applicant : Shri Shyam Prateek, Advocate
For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate

10.

OA 275/2015 (RB, Jaipur)**Rajesh Kumar****... Applicant****Versus****Union of India & Ors.****... Respondents****For Applicant** : Shri Ankit Kumar, Advocate**For Respondents** : Dr. Vijendra Singh Mahndiyan, Advocate

11.

OA 91/2019 (RB, Jaipur)**Vijay Singh****... Applicant****Versus****Union of India & Ors.****... Respondents****For Applicant** : Shri Vinay Jain, Advocate**For Respondents** : Dr. Yuvraj Singh, Advocate

12.

OA 92/2019 (RB, Jaipur)**Sandeep Kumar Swami****... Applicant****Versus****Union of India & Ors.****... Respondents****For Applicant** : Shri Vinay Jain, Advocate**For Respondents** : Dr. Yuvraj Singh, Advocate

13.

OA 93/2019 (RB, Jaipur)**Mohd Soyab****... Applicant****Versus****Union of India & Ors.****... Respondents****For Applicant** : Shri Vinay Jain, Advocate**For Respondents** : Shri Tribhuwan Singh, Advocate

14.

OA 94/2019 (RB, Jaipur)**Pawan Kumar Jyani & Ors.****... Applicants****Versus****Union of India & Ors.****... Respondents****For Applicants** : Shri Vinay Jain, Advocate**For Respondents** : Shri Tribhuwan Singh, Advocate

15.

OA 34/2021 (RB, Jaipur)**Jhabar Rayal****... Applicant****Versus****Union of India & Ors.****... Respondents****For Applicant** : Shri Yogendra Singh & Shri Sunil
Kumar, Advocates**For Respondents** : Shri Sandeep Garssa, Advocate

16.

OA 35/2021 (RB, Jaipur)**Chothmal****... Applicant****Versus****Union of India & Ors.****... Respondents****For Applicant** : Shri Yogendra Singh with Shri Sunil
Kumar, Advocates**For Respondents** : Shri Sandeep Garssa, Advocate

17.

OA 51/2021 with MA 50/2021 (RB, Jaipur)**Dainy Kumar****... Applicant****Versus****Union of India & Ors.****... Respondents****For Applicant** : Shri Yogendra Singh with Shri Sunil
Kumar, Advocates**For Respondents** : Shri Gajendra Sharma, Advocate

18.

OA 53/2021 (RB, Jaipur)**Farukh Khan s/o Salamudeen****... Applicant****Versus****Union of India & Ors.****... Respondents****For Applicant** : Shri Mahipal Shekhawat, Advocate**For Respondents** : Shri Brij Bihari Sharma, Advocate

19.

OA 68/2021 (RB, Jaipur)**Devendra Choudhary****... Applicant****Versus****Union of India & Ors.****... Respondents**

For Applicant : Shri R.S. Bhadauria, Advocate
For Respondents : Shri Pyare Lal, Advocate

20.

OA 84/2021 (RB, Jaipur)

Shiv Ram Gurjar

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri R.S. Bhadauria, Advocate
For Respondents : Shri Pyare Lal, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER

Since common questions of law arise for consideration in these cases, they are being disposed of by this order. As the reference in question is made to this Bench in O.A. No. 17 of 2015 (*Kaptan Singh Vs. Union of India and others*), the facts and pleadings available on the record of the said case are referred to for deciding the legal issues involved in these cases.

2. On 08.03.2016, the Jaipur Regional Bench of this Tribunal, while hearing the case of *Kaptan Singh (supra)*, observed that, there being a conflict of opinion between the Rajasthan High Court and the Tribunal, as to the correct interpretation of the term “**service matters**” as appearing in Section 3(o) of the Armed Forces Tribunal Act, 2007 (hereinafter

referred to as 'the AFT Act'), the matter be placed before the Hon'ble Chairperson of the Armed Forces Tribunal for constitution of a larger Bench to resolve the controversy. Accordingly, the matter has been placed before the Bench (Full Bench) for consideration.

3. Before advertizing to consider various aspects of the matter, it may be appropriate to take note of the facts and the events which led to a reference being made.

4. Kaptan Singh, the applicant in O.A. No. 17 of 2015, invoked the jurisdiction of this Tribunal under Section 14 of the AFT Act and it was his grievance in the application that though he was selected to the post of Soldier (GD) in the Army, he was not allowed to join duty on account of a criminal case pending against him. He prayed that a direction be issued to the respondents to allow him to join duties on the post of Soldier (GD) in the Army.

5. Learned counsel appearing for the respondents raised a preliminary objection with regard to maintainability of the application, it was submitted that since the applicant, Kaptan Singh, is not a person subject to the Army Act, 1950, the Navy Act, 1957 or the Air Force Act, 1950, the application is not maintainable in view of the provisions of Section 2(i) read with Section 3(o) of the AFT Act. Rebutting the aforesaid contention, Shri Devi Singh Choudhary, learned counsel for the

applicant brought to the notice of the Bench the judgment rendered by a Single Bench of the Rajasthan High Court in **Nathulal Gurjar Vs. Union of India and another** (S.B. Civil Writ Petition No. 17054 of 2012) dated 18.11.2013 and affirmed by a Division Bench of the same High Court on 22.08.2014 in Special Appeal (Writ) No. 396 of 2014.

6. After hearing the rival contentions in Para 5 of the order dated 08.03.2016, the learned Bench took note of Section 2 of the AFT Act, definition of 'service matters' appearing in Section 3(o) of the AFT Act and came to the conclusion that the AFT Act will apply only to such persons who are subject to the Army Act, 1950, the Navy Act, 1957 or the Air Force Act, 1950, including their dependants, heirs and successors, in so far as it relates to their service matters.

7. On analysing the provisions of the AFT Act and the Army Act, 1950, learned Bench found that it is not permissible for a Court, either to enlarge the scope of a legislation or the intention of the legislature when the language of the provisions is plain and unambiguous. The Court cannot rewrite, recast or re-frame the legislation for the very good reason that it has no power to legislate, thus the power to legislate has not been conferred on the Courts. The Bench also observed that Courts cannot add words to the Statute or read words into it which are not there. Taking note of the golden rule of the interpretation,

the Bench concluded that in the case on hand, the applicant is not subjected either to the Army Act, Navy Act or the Air Force Act and, therefore, the application was not maintainable. Holding so, the Bench took the view that its finding was supported by the decision of a Division Bench of the Allahabad High Court in the case of **Union of India Thru' Secy. and others Vs. Kapil Kumar (Special Appeal No. 833 of 2015) (MANU/UP/2042/2015)**. However, the Bench found that in the case of *Nathulal Gurjar (supra)*, the Rajasthan High Court has taken note of the definition of the expression 'service matters' as appearing in Section 3(o)(ii) of the AFT Act, import of Section 2 of the AFT Act and thereafter it recorded a finding in the following manner:

"If the definition given under Section 3(o)(ii) of the Act of 2007 is looked in to, 'after every word', (Column) is used and it is also after word "tenure" and thus, word "tenure" cannot be applied before every word like commission, appointment, etc. and if at all, it is taken before every word then there would be tenure confirmation, tenure seniority, tenure promotion and tenure reversion apart from tenure retirement, tenure termination of service etc. It would be nothing but mis-interpretation of provision, where each word is separately used with, " " (column). In the light of the aforesaid, every word has to be read separately. If the word appointment is read separately in the definition of "service matters", this includes matters of appointment. It would obviously be a dispute in the matter of appointment. After the appointment, a dispute cannot be for appointment but can be regarding probation, confirmation,

seniority, training, promotion and so on. In the background aforesaid, if a question for appointment is excluded from the definition of "service matters", it would be nothing but re-writing the provision.

The issue is now required to be considered in the light of the Army Act of 1950 as the definition of "service matters" refers to the persons subject to Army Act.

Section 2 of the Act of 1950 has been referred to show as to who are the persons subject to Act of 1950 and if substance of the provision is looked into, it means those, who are enrolled or appointed apart from commission officers. If that is so, then what is the significance of section 3(o)(ii) of the Act of 2007 where the word 'appointment' has been used. Section 10 of the Act of 1950 is relevant where subject matter of the Act of 1950 is given. The President may grant commission to an Officer or appoint any person as a warrant officer. If that is so, the Act of 1950 covers the matter of appointment, which is to be given by the President. Section 11 provides about ineligibility of aliens for enrollment and Section 13 of the Act of 1950 provides procedure before enrolling officers. Section 14 of the Act of 1950 provides mode of enrolment. Conjoint reading of the Act of 1950 along with Section 3(o)(ii) of the Act of 2007 makes it clear that controversy in regard to appointment is nothing but under the Act of 1950 and if, that is the position, jurisdiction to resolve the dispute pertaining to appointment lies in the jurisdiction of AFT. The purpose and object of the Act of 2007 was to take away all the service matters relating to Army, Navy and Air Force from the jurisdiction of the High Court and to be brought before the Tribunal. If any matter relating to appointment in Army is excluded from the jurisdiction of AFT then it would be against the object of the enactment.

Taking note of the aforesaid, I am unable to accept the arguments of learned counsel for the petitioner/s so as to exercise jurisdiction of this Court in relation to matter of appointment. The jurisdiction lies with the AFT and otherwise petitioners are not remedy-less, in as much as, if the jurisdiction does not lie to this Court, grievance of petitioners would be redressed by the Tribunal where jurisdiction exists."

8. Taking note of the findings recorded by the Rajasthan High Court, learned Bench came to the conclusion that there being conflict of opinion between the Tribunal and the Rajasthan High Court, the matter requires consideration by a Larger Bench of the Armed Forces Tribunal and that is how, on the directions of Hon'ble Chairperson, the matters have come before us.

9. When the matters were heard on 08.04.2021, Dr. Vijendra Singh Mahndiyan, learned counsel for the respondents, at the very outset, invited our attention to Section 28 of the AFT Act and contended that if there is a difference of opinion on any point between the Members of the Bench(es) of the Tribunal, only then the matter can be referred to a Larger Bench for resolution of such a dispute. It was submitted by him that in this case, as there is no difference of opinion between the Members constituting the Bench of this Tribunal, nor is there any difference of opinion between two different

Benches of the Tribunal on any question of law or point, the reference itself was not maintainable.

10. We have considered this submission and have taken note of the requirements of Section 28. Though we find some force in such a contention made by learned counsel for the respondents, still, we do not deem it appropriate to refuse to answer the reference on the objections raised, for the simple reason that there being some doubts expressed by the Bench with regard to the legal issue involved in the matter, it is always appropriate and in the interest of administration of justice that the issue is clarified and once the matter has been heard at length by us with regard to all aspects of the matter, we proceed to decide the issue at length.

11. Apart from the case of Kaptan Singh (Applicant in O.A. No. 17 of 2015), in all other cases that are listed for consideration before us, the questions of law involved are identical in nature except that in each case, the reason for refusing 'appointment' or 'enrolment' into service of the Armed Forces is different. In some cases, it is on medical ground and in some, it is on account of non-fulfillment of the eligibility criteria etc. However, common question of law involved in the matters are, as to whether the applicants, who, according to the respondents, are not subjected to the Army Act, 1950, the Navy Act, 1957 or the Air Force Act, 1950, can invoke the jurisdiction

of this Tribunal for redressal of their grievances, which pertain to their recruitment to the services of the Armed Forces.

12. In fact, Hon'ble Dr. Justice Dhananjaya Yeshwant Chandrachud, Chief Justice of Allahabad High Court (as he then was) has considered this issue in the case of *Kapil Kumar (supra)* and answered the same after a detailed analysis of statutory provisions.

13. The Hon'ble Division Bench of the Allahabad High Court in the case of *Kapil Kumar (supra)* found that the long title of the Armed Forces Tribunal Act, 2007 contemplates that for the purpose of providing a forum for adjudication or trial by the Armed Forces Tribunal of disputes or complaints with respect to the commission, appointments, enrolments 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 for providing for a forum for appeals arising out of certain orders, findings or sentences of courts-martial held under the said three Acts, Parliament enacted the AFT Act and constituted the Armed Forces Tribunal. Section 2 of the AFT Act 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, 1950 (45 of 1950), including their dependents, heirs and successors, in so far as it relates to their service matters."

(emphasis added)

14. Chapter II of the AFT Act provides for establishment of the Tribunal; Chapter III deals with the powers, jurisdiction and authority of the Tribunal and Section 14 contemplates that the Tribunal constituted under the AFT Act is to exercise, on and from the appointed day, all the jurisdiction, which was exercisable 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. Appellate jurisdiction is conferred on the Tribunal under Section 15 and the expression 'service matters' is defined in Section 3(o) of the AFT Act in the following manner:

"3. Definitions. —In this Act, unless the context otherwise requires, —

xxx

xxx

(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."

15. The Statement of Objects and Reasons, which recommended the introduction of the Bill in Parliament, indicates the rationale for the enactment of this Legislation and the same reads as under:

"2. Having regard to the fact that a large number of cases relating to service matters of the members of the above-mentioned three armed forces of Union have been pending in the courts for a long time, the question of constituting an independent adjudicatory forum for the Defence Personnel has been engaging the attention of the Central Government for quite some time. In 1982, the Supreme Court in *Prithi Pal Singh Bedi v. Union of India* AIR 1982 SC 1413 held that the

absence of even one appeal with power to review evidence, legal formulation, conclusion and adequacy or otherwise of punishment in the laws relating to the armed forces was a distressing and glaring lacuna and urged the Government to take steps to provide for at least one judicial review in service matters. The Estimates Committee of the Parliament in their 19th Report presented to the Lok Sabha on 20th August, 1992 had desired that the Government should constitute an independent statutory Board or Tribunal for service personnel.

3. In view of the above, it is proposed to enact a new legislation by constituting an Armed Forces Tribunal for adjudication of complaints and disputes regarding service matters and appeals arising out of the verdicts of the courts-martial of the members of the three services (Army, Navy and Air Force) to provide for quicker and less expensive justice to the members of the said Armed Forces of the Union.

4. Establishment of an independent Armed Forces Tribunal will fortify the trust and confidence amongst members of the three services in the system of dispensation of justice in relation to their service matters.”

(emphasis supplied)

16. The Division Bench of the Allahabad High Court thereafter analysed various provisions of the AFT Act and gave its specific finding with regard to the issue in question, which we shall refer to at a later stage, as of now we deem it appropriate to take note of the submissions made before us and thereafter analyse it in accordance with the requirement of law.

17. Inviting our attention to the expression “service matters” i.e. Section 3(o) of the AFT Act and the words “tenure”,

“appointment” and “enrolment” appearing in sub-section (ii) of Section 3(o), Mr. Devi Singh and Ms. Savita Singh, learned counsel appearing for the applicants, argued that the words ‘appointment’ and ‘enrolment’ appearing in the definition of ‘service matters’ would be rendered otiose or redundant and inoperative if matters pertaining to appointment to the Armed Force services are kept outside the purview of the AFT Act. It was their contention that the Tribunal itself was created for redressal of all service matters pertaining to persons working in the Armed Forces and when the words ‘appointment’ and ‘enrolment’ are included within the definition of ‘service matters’, it would clearly mean that the ‘appointment’ into the Services and ‘enrolment’ of the persons to the Armed Forces are also covered by the definition of ‘service matters’. Thereafter, they invited our attention to Section 13 of the Army Act, 1950 regarding the procedure to be followed when a person appears before the Enrolling Officer and contended that enrolment itself is a subject-matter covered under the Army Act and when the question of enrolment is in dispute, the Tribunal will have jurisdiction to deal with the same. They, in detail, took us through the provisions of Section 3(o) of the AFT Act, the implication and definition of ‘service matters’, the purpose for which the Tribunal was created and argued that all matters pertaining to ‘recruitment’ and ‘appointment’ to the three

Services fall within the ambit of the AFT Act and, therefore, this Tribunal had jurisdiction to deal with the matter(s). Thereafter, the learned counsel invited our attention to the judgment of the Rajasthan High Court in the case of *Nathulal Gurjar (supra)* and argued that the Rajasthan High Court has considered the definition of 'service matters' appearing in Section 3(o) of the AFT Act, took note of the words 'tenure', 'appointment' and 'enrolment' appearing in the definition of the 'service matters' and has come to the conclusion that all these issues have to be given their correct and wider interpretation and if that is done, it is clear that all controversies regarding 'appointment' or 'enrolment' are nothing but an act which is performed under the Army Act, 1950 and, therefore, the Tribunal has jurisdiction. The learned counsel further contended that the legal principles having been elaborately dealt with and concluded by the Rajasthan High Court both by the Single Bench and the Division Bench in the case of *Nathulal Gurjar (supra)*, nothing further remains for adjudication or analysis in the matter.

18. That apart, Ms. Savita Singh, learned counsel for one of the applicants, emphasised that in her case, the applicants are widow and the son of a deceased employee of the Army and as they are claiming the appointment to the service after the death of the employee, who was earlier subject to the Army Act,

while he was alive and in service, in their case, the AFT Act would be applicable for the simple reason that under subsection (2) of Section 2, the AFT Act is applicable to the dependants, heirs and successors of the Army personnel in relation to service matters. Accordingly, learned counsel argued that the reference may be answered in favour of the applicants.

19. Dr. Mahndiyan, learned counsel for the respondents, refuted the aforesaid contentions of the learned counsel for the applicants and again took us through the definition of 'service matters' as contained in Section 3(o), the purpose for which the AFT Act was enacted, meaning and applicability of Section 2, the method of recruitment and enrolment in the Army and argued that as per the law laid down by the Allahabad High Court in *Kapil Kumar (supra)*, to come within the purview of 'service matters', as defined in Section 3(o) of the AFT Act, an individual should fulfil two conditions – (i) that he must be subject to the Army Act, 1950, the Navy Act, 1957 or the Air Force Act, 1950 and (ii) along with the same, the dispute must fall within the meaning of the words 'service matters' as defined in Section 3(o) of the AFT Act. The existence of both these conditions together is *sine qua non* for applicability of AFT Act and in the cases in hand, as the applicants are not subject to the Army Act, the Navy Act or the Air Force Act, this Tribunal will not have jurisdiction. He thereafter took us through the

Army Act, 1950 and tried to argue that the procedures for enrolment are provided in Sections 13, 14 and 15 and thereafter again in Sections 43 and 44 elaborate procedures which have to be followed are laid down and it is only after following these procedures that a person becomes subject to the Army Act. In these cases, it is submitted by him that except for shortlisting of the applicants in the selection process, their enrolment process, in accordance to the requirements of the Army Act/Navy Act/Air Force Act, was not completed and, therefore, they are not subject to the respective Acts, as the case may be, and thus the jurisdiction to the Tribunal will not be available. In support of his contentions, he placed reliance on the following decisions:

1. *Union of India and others v. Kapil Kumar* (Special Appeal No. 833 of 2015 decided on 24.11.2015) [MANU/UP/2042/2015]
2. *Union of India and others v. G.S. Grewal* (Civil Appeal No. 3879 of 2013 decided on 28.05.2014) (MANU/SC/0517/2014)
3. *Prafulla Kumar Swain v. Prakash Chandra Misra and others* (Civil Appeal Nos. 185-187 of 1993 decided on 18.01.1993) (MANU/SC/0719/1993)
4. *Vijay Kumar Mishra and others v. High Court of Judicature at Patna and others* [Civil Appeal No. 7358 of 2016 decided on 09.08.2016] [MANU/SC/0878/2016]

5. *Usha Narwariya v. State of M.P. and others*
 [Misc. Petn. 1278/1992 decided on 22.06.1993]
 [MANU/MP/0082/1993]

While concluding, he argued that the legal issue having been decided in the case of *Kapil Kumar (supra)* by the Division Bench of Allahabad High Court, the same would be a binding precedent and applicable in the present cases. The learned counsel argued that the Allahabad High Court having rejected identical arguments, there survives nothing for adjudication.

20. We have considered the rival contentions and have also bestowed our consideration to various submissions and the provisions brought to our notice.

21. As already indicated hereinabove, the Allahabad High Court, after the issue has been considered by the Rajasthan High Court in the case of *Nathulal Gurjar (supra)* on 18.11.2015, has decided the legal questions in the case of *Kapil Kumar (supra)* on 24.11.2015 and while doing so, the learned Division Bench of the Allahabad High Court, after analysing the statutory provisions of Sections 2, 3(o), 14 and 15 of the AFT Act and the objects and reasons for which the AFT Act was enacted, came to the conclusion that in order to bring the matter within the meaning of Section 3(o) of the AFT Act, the twin requirements to be fulfilled are that the dispute must arise in relation to persons who are subject to the Army Act, 1950,

the Navy Act, 1957 or the Air Force Act, 1950, and must also fulfil the description relating to the conditions of their service. After considering various aspects of the matter, the expression 'persons subject to' the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950 has been taken note of and the issue has been decided in the following manner:

"The expression "persons subject to" the Army Act 1950, the Air Force Act 1950 and the Navy Act 1957 are therefore terms which have a well defined connotation and meaning having due regard to the provisions of the three Acts to which we have made a reference above. The Armed Forces Tribunal Act 2007 specifies in Section 2 that its provisions shall apply to all persons who are subject to the Army Act 1950, the Air Force Act 1950 and the Navy Act 1957. Sub-section (2) enlarges the applicability of the Act to cover retired personnel subject to the aforesaid three Acts including their dependents, heirs and successors insofar as they relate to their service matters. When the provisions to which we have made a reference earlier are read together, it is evident that in order for the Tribunal to have jurisdiction under Section 14, the dispute must relate to a service matter as defined in Section 3(o) of the Act. The basic requirement of being a service matter is that it must arise in relation to persons who are subject to the Army Act 1950, the Air Force Act 1950 or the Navy Act 1957."

(emphasis added)

Thereafter, the learned Division Bench held that both the limbs of Section 3(o) of the AFT Act are required to be fulfilled and in the case of *Union of India Vs. Col G.S. Grewal* (AIR 2014 SC 3494), the Hon'ble Supreme Court has held that merely because

a person is subject to the Army Act, the Armed Forces Tribunal will not be vested with the jurisdiction unless the subject-matter also constitutes a 'service matter' within the meaning of Section 3(o) of the AFT Act. Hon'ble Supreme Court has observed as under:

"We may point out that merely because the respondent is subject to the Army Act would not by itself be sufficient to conclude that the Tribunal has the jurisdiction to deal with any case brought before it by such a person. It would depend upon the subject matter which is brought before the Tribunal and the Tribunal is also required to determine as to whether such a subject matter falls within the definition of 'Service Matters', as contained in Section 3(o) of the AFT Act."

After taking note of all these factors, learned Division Bench has come to the conclusion that the Armed Forces Tribunal can exercise jurisdiction under Section 14 of the AFT Act with regard to a person in relation to whom the dispute arises, but the person must be subject to one of the three Legislations i.e. the Army Act, 1950, the Navy Act, 1957 or the Air Force Act, 1950, and, at the same time, the ingredients of the expression 'service matters' in Section 3(o) of the AFT Act must also be fulfilled. The principle of the law laid down by the Division Bench of the Allahabad High Court in the aforesaid case, in our considered view, squarely applies, as observed by the Jaipur Bench of this Tribunal, while making the reference on

08.03.2016 and there is no iota of doubt in our mind that on the basis of the law laid down by the Division Bench of the Allahabad High Court, this Tribunal lacks jurisdiction to deal with the cases in hand. However, as the principles laid down by the Rajasthan High Court in the case of *Nathulal Gurjar (supra)* were canvassed in detail before us, we owe a duty to advert to consider all those grounds also and explain the position as to why we are not in agreement with the submissions made by the learned counsel for the applicants.

22. Before advertizing to consider these aspects of the matter, we would like to take note of certain principles governing the law of interpretation of Statute, which were vehemently argued before us by Dr. Mahndiyan, provisions of the Army Act, 1950 and the Defence Services Regulations and then analyse them in the backdrop of the reasons, which weighed with the Rajasthan High Court in deciding the issue.

23. It is the cardinal principle of interpretation of Statute that before interpreting the provisions of a Statute or legislation and various provisions contained therein, Legislative intent, the purpose and other conditions for which the law was enacted must be taken note of and it is the duty of every adjudicating Court, Authority or Tribunal to act upon in furtherance to the true intention of the Legislature.

24. We have considered this aspect recently while deciding O.A. No. 665 of 2020 (*Dfr Shatrughan Singh Tomar Vs. Union of India and others*) on 07.04.2021 and after taking note of the observations made by Hon'ble Justice G.P. Singh, as he then was, in the 13th Edition of his Book 'Principles of Statutory Interpretation', we observed as under:

"It is the basic principle of interpretation of Statute that the Statute is to be construed according to the intent for which it has been enacted and it is the duty of every adjudicating Court, Tribunal or Authority to act upon in furtherance to the true intention of the Legislature. In fact, the object of interpretation of Statute is to ascertain the intention of the Legislature communicating it and advance the cause of such intention. Meaning of the words used by the Legislature should be objectively determined in a legal manner or true manner of the words should be given effect to in a precise manner in which it has been used in the enactment. That apart, the Legislative intent has to be derived and has to be found out by reading the Statute as a whole. The provisions or words cannot be interpreted by ignoring certain parts of the Statute or words, and while interpreting the provisions, the scheme, for which the law has been brought into force, should be given effect to. In the case of O.P. Singla Vs. Union of India [(1984) 4 SCC 450], Hon'ble Justice Y.V. Chandrachud, the then Chief Justice of India, observed and we quote as under:

"One must have regard to the scheme of the fasciculus of the relevant rules or sections in order to determine the true meaning of any one or more of them. An isolated consideration of the provision leads to the risk of some other inter-related provisions becoming otiose or devoid of meaning." (Emphasis supplied)

16. Similarly, when the words of Statute are clear, plain or unambiguous i.e. they are reasonably susceptible to only one meaning, the Court is bound to give effect to that meaning, irrespective of its consequences. (*Nelson Motis Vs. Union of India and another* [AIR 1992 SC 1981])”

25. That apart, in the case of Punjab Land Development and Reclamation Corporation Ltd., Chandigarh v. Presiding Officer, Labour Court, Chandigarh and Others (1990) 3 SCC 682, a Constitution Bench of the Hon’ble Supreme Court, while interpreting the definition of ‘retrenchment’ appearing in Section 2(oo) of the Industrial Disputes Act, 1947 and while considering its constitutional validity, has considered various issues pertaining to interpretation of Statute for arriving at a just decision. The Hon’ble Supreme Court, in Para 62, referring to the principle of literal interpretation as laid down by Tindal, C.J. in *Sussex Peerage Case* (1844) 81 ER 1034 (HL), observed that the only rule of construction of an enactment of the Parliament is that it must be construed according to the intent of the Parliament which passed it. If the words of a Statute are precise and unambiguous, then there is no necessity to expound them or enlarge them and to interpret them in a manner by which the natural and ordinary sense of the words is destroyed. Referring to an earlier judgement of the Hon’ble Supreme Court in the case of *B.N. Mutto Vs. T.K. Nandi* (1979) 1 SCC 361, the Constitution Bench further observed that a Court

has to determine the intention as expressed by the words used and then interpret the words and meaning in accordance with the intention of the Legislature. After taking note of the various principles, not only in cases decided by the Hon'ble Supreme Court but by various Courts in England also, the Heydon's Rule of Interpretation was taken note of in Para 65 and in Para 67, the cardinal rule of construction has been crystallised by holding that the literal rule of construction requires wordings of an enactment to be construed according to its literal and grammatical meaning whatever the result may be, unless otherwise provided or indicated by the Legislature. This, in our considered view, is the cardinal principle governing the rule of Statute interpretation. If we apply the same to the case on hand, we find that in Section 2 of the AFT Act, it is already stated in explicit terms that the Act is made applicable to persons subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950 and also 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, 1950 (45 of 1950), including their dependents, heirs and successors, in so far as it relates to their service matters.

26. Therefore, as laid down by the Allahabad High Court in the case of *Kapil Kumar (supra)*, the first requirement of law is that the AFT Act would apply only to such persons who are

subject to either of the three Acts as are indicated in sub-sections (1) and (2) of Section 2. Thereafter, Section 3(o), while defining 'service matters' again used the words in relation to 'persons subject to' the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950 with regard to matters pertaining to their conditions of service, which include eventualities described in clause (iv), wherein 'appointment' and 'enrolment' are two subject-matters. That being so, a dispute, to come within the ambit of 'enrolment' and 'appointment', has to be in relation to a person who is subject to the Army Act, the Navy Act or the Air Force Act. Merely because something relating to the 'appointment' and 'enrolment' is canvassed by a person who is not subject to any of the three Acts, this Tribunal will not get jurisdiction.

27. That being so, at this stage, we would take note of what are the provisions of the Army Act, 1950 and as to whom they would apply. The Army Act, 1950 has been enacted and made applicable to the regular Army in India and the Army Act, the Navy Act and the Air Force Act lay down the general principles with regard to the three Forces. Section 2(1) of the Army Act contemplates and details the persons who are subject to the Army Act and sub-section 2(1)(b) contemplates that a person who has been enrolled in the Act will be subject to the Army Act. Even though the word 'enrolment' has not been

defined in the Army Act, in Chapter III thereof, the method for commission, appointment and enrolment has been laid down. Section 10 speaks about the 'commission' and 'appointment'; Section 11 provides for ineligibility of aliens for enrolment; Section 12 contemplates ineligibility of females from seeking enrolment and employment/appointment in the Army and Section 13, which was heavily relied upon by the learned counsel for the applicants, contemplates the procedure to be followed when a person presents himself for enrolment before the enrolling officer. At this stage, it would be appropriate to take note of Sections 13 and 14 of the Army Act, which prescribe the procedure to be followed before the enrolling persons and the mode of enrolment. They read as under:

"13. Procedure before enrolling officer. — Upon the appearance before the prescribed enrolling officer of any person desirous of being enrolled, the enrolling officer shall read and explain to him, or cause to be read and explained to him in his presence, the conditions of the service for which he is to be enrolled; and shall put to him the questions set forth in the prescribed form of enrolment, and shall, after having cautioned him that if he makes a false answer to any such question, he will be liable to punishment under this Act, record or cause to be recorded his answer to each such question.

14. Mode of enrolment. If, after complying with the provisions of section 13, the enrolling officer is satisfied that the person desirous of being enrolled fully understands the questions put to him and consents to the conditions of service, and if such officer perceives no impediment, he

shall sign and shall also cause such person to sign the enrolment paper, and such person shall thereupon be deemed to be enrolled."

28. A bare reading of the aforesaid Sections would show that a person upon his appearance before the prescribed enrolling officer and who is desirous of being enrolled in the Army, the enrolling officer, as provided in the Statute, is required to read and explain to the person concerned the conditions of service for which he is to be enrolled, to put certain questions to him in the prescribed form of enrolment and after having cautioned him that in case he makes a false answer to any of the questions, he is liable to punishment under the Army Act, record his answers and after following the mode of enrolment prescribed under Sections 14, complete the enrolment formalities. Even if this procedure is completed, the person does not become an enrolled person in accordance with the Army Act. The validity of procedure followed, as contemplated under Sections 13 and 14, is only for three months and the conditions stipulated during this validity period, as contained in Section 15, have to be fulfilled, failing which the person is liable to be discharged during this period of three months. After he successfully completes the validity period of enrolment, the person is subjected to attestation and the process for 'attestation' is provided in the Army Rules, 1954, Chapter II under these Rules, the procedure to be followed by

the enrolling officer as per Section 13 of the Army Act is stipulated under Rule 7 and after the same is completed, the person has to be attested and Rule 8 contemplates that all combatants and other enrolled person who may be selected to hold non-commissioned or acting non-commissioned rank and who are fit to report for duty are attested in the manner prescribed in Section 17 of the Army Act, 1950. Section 17 speaks about the attestation, administering oath and it is only after a person has administered the oath that his enrolment process is completed and the oath to be administered at the time of attestation is stated under Rule 9 of the Army Rules, 1954 and the form of the oath is also contemplated under this rule.

29. If we analyze the detailed procedure laid down in the Army Act and the Rules framed thereunder for the purpose of enrolment of a person, in order to make the Army Act applicable to him, we find that merely by having been selected in the physical, medical test and the entrance examination, a person is not admitted to and subject to the provisions of the Army Act. The procedure for recruitment i.e. the selection process of physical test, medical test and competitive examination is nothing but a process for shortlisting of a desirable candidate to take him for enrolment and thereafter once he is found fit for the enrolment after the elaborate procedure, as detailed in the

Army Act/Rules and as discussed hereinabove, is fulfilled, he is said to be enrolled to the Army and then he becomes a person subject to the Army Act, 1950.

30. In the present case, it is not at all the case of any of the applicants that they went through all these enrolment procedures contemplated under the Statute and that they were refused permission to join even after following these procedures. On the contrary, they were only subjected to the preliminary selection process of scrutiny i.e. subjecting them to the physical test, medical test and evaluating their suitability as and when required by competitive examination, shortlisting them on being found fit for enrolment and thereafter directing them to report to the Regiment or Unit concerned for the purpose of enrolment and attestation as required under the Army Act/Navy Act/Air Force Act and the Rules framed thereunder. It is a case where the applicants were not subjected to the Army Act, the Navy Act or the Air Force Act and, therefore, the requirements as contemplated under Section 2(i) or Section 2(ii), including the first part of Section 3(o) of the AFT Act, were not fulfilled.

31. Having held so, we would now take note of the arguments advanced before us and the import of the words "appointment" and "enrolment" as referred to in Section 3(o)(ii) of the AFT Act to analyze the submissions of the learned counsel as to what are the meanings of these words and to what

extent the contention of the applicants that all appointments and enrolments even if the persons are not subject to the Army Act would be within the jurisdiction of this Tribunal. For this, we may take note of the Defence Services Regulations and the Regulations pertaining to the Army. The Regulations for the Army lay down various elaborate procedures with regard to working of the organization, control, training, duties of various Commanders and staff, Regimental Officers appointment, grading, posting and transfers, recruitment and enrolment to the regiment. Admittedly, the Regulations also lay down regulatory methods for enrolment, attestation into the service and various procedures for appointment to various ranks and commissioned posts in the Army for persons subject to the Army Act.

32. Viewed thus, we have no hesitation in holding that the words 'appointment' and 'enrolment' appearing in sub-clause (ii) of Section 3(o) of the AFT Act pertain to certain aspects of appointment and recruitment as are contemplated in the statutory regulations and the rules, which govern the terms and conditions of service of persons subject to the Army Act, 1950. Similarly, there are provisions and regulations in the Navy and Air Force for the persons covered under the Navy Act, 1957 and the Air Force Act, 1950 also. That being so, the words 'appointment' and 'enrolment' appearing in the definition

of 'service matters' in Section 3(o) of the AFT Act are to be construed with reference to the meaning they have in the backdrop of the fact that the 'service matters' relate to persons who are already subjected to the Army Act, 1950, the Navy Act, 1957 or the Air Force Act, 1950. If the matter pertains to the appointment and enrolment of a person who is not subject to the Army Act, the Navy Act or the Air Force Act, then in his case, question of 'appointment/enrolment' will have to be dealt with by a forum other than this Tribunal under the AFT Act. In our considered view, the Legislative intent and the words used in the enactment are very simple, clear and unambiguous and while considering this aspect of the matter, the Allahabad High Court held that, to confer jurisdiction on the Tribunal, the twin requirements as contemplated under Section 2(i) or Section 2(ii), including the first part of Section 3(o) of the AFT Act are to be fulfilled.

33. In the light of the foregoing, we are of the considered view that the Hon'ble Rajasthan High Court, while considering the issue in the case of *Nathulal Gurjar (supra)*, read the words 'appointment' and 'recruitment' in isolation, without correctly appreciating the legislative intent, various aspects and meaning of the words used in the Statute and by picking up certain words like "appointment", "enrolment", etc., interpreted them in a manner which is not permissible under law. The words

should have been considered and interpreted in the context of which the same have been used and in furtherance to the Legislative intent i.e. the words 'appointment' and 'enrolment' pertain to persons who are subject to the Army Act, Navy Act or the Air Force Act and once we find that various aspects pertaining to appointment and enrolment are provided for in the statutory rules and the regulations applicable to members of three Forces, the Legislative intent was to give a forum to the persons covered under the three Legislations to ventilate their grievances with regard to matters falling within the meaning of 'service matters' as defined in Section 3(o) of the AFT Act.

34. Therefore, we have no hesitation in holding that as far as the present applicants are concerned, the disputes pertaining to their selection, which have been canvassed in these cases, are matters that fall beyond the jurisdiction of this Tribunal inasmuch as there were procedures followed at a stage which was before they became subject to the Army Act, Navy Act or the Air Force Act, as the case may be, and, therefore, any dispute pertaining to the recruitment/appointment at that stage is beyond our jurisdiction. The jurisdiction of this Tribunal would arise only if the 'service matters', as defined in Section 3(o) of the AFT Act, come into existence i.e. when a person has been subject to the Army Act, 1950, the Navy Act, 1957 or the Air Force Act, 1950, as the case may be, and, in our considered

view, the learned Division Bench of the Allahabad High Court having decided the controversy as dealt with herein above, in categorical and specific terms, we have no hesitation in accepting and following the same. On the contrary, we may, with great respect, state that the Hon'ble Rajasthan High Court, while deciding the case in *Nathulal Gurjar (supra)*, did not consider various legal issues, particularly the principle of interpretation of Statutes and the Legislative intent and arrived at a conclusion based on an isolated reading of certain words in the definition which, in our considered view, does not lay down the correct law., with which we, with due respect, would disagree.


35. Accordingly, we answer the reference by holding that as the applicants are not subject to the Army Act, 1950, the Navy Act, 1957 or the Air Force Act, 1950, as the case may be, this Tribunal has no jurisdiction to deal with the matter and the dispute canvassed by them in the applications filed under Section 14 of the AFT Act does not fall within the ambit of 'service matters' defined in Section 3(o) of the AFT Act. The reference is answered accordingly.


36. Having done so, normally the matters should have been sent back to the respective Regional Benches of the Tribunal for consideration on merits, but in these cases, we find that the only issue involved for the present is as to whether the

applications were maintainable and as we have found that the preliminary issue raised by the learned counsel representing the Union of India is valid, we see no reason to keep the matters pending and remit the same back for consideration to the Regional Benches.

37. Resultantly, the OAs fail and are dismissed, with liberty to the applicants to take recourse to such remedy or procedure as may be available to them in accordance with law to ventilate their grievances with regard to the impugned action. However, in the facts and circumstances of the case, there shall be no order as to costs.

Pronounced in open Court on this 28th day of May, 2021.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


[JUSTICE SUNITA GUPTA]
MEMBER (J)


[LT GEN P.M. HARIZ]
MEMBER (A)

/ng/