

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

SB:- Hon'ble Shri Justice G. S. Ahluwalia

WP 23209 of 2019

Vikram Singh Gurjar vs. Union of India and Ors.

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Shri Purushottam Sharma, counsel for the petitioner.

Shri Shashank Indapurkar, Proxy Counsel on behalf of Shri Vivek Khedkar, Assistant Solicitor General for the respondents/ Union of India, on advance notice.

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Order

(Passed on 12/12/2019)

By this petition filed under Article 226 of the Constitution of India, the petitioner has challenged his non-selection on the post of Soldier Trademan in a recruitment process undertaken by the respondents No.2 to 4.

(2) An objection was raised by the Counsel for the Union of India that in view of definition of "service matters" as given in Section 3(o) of the Armed Forces Tribunal Act, 2007, the question of appointment would be within the exclusive jurisdiction of Armed Forces Tribunal and since the petitioner is seeking appointment in the Army under the Army Act, 1950, therefore, this Court has no jurisdiction to entertain this petition.

(3) *Per contra*, it is submitted by the counsel for the petitioner that the words "service matters" means in relation to the persons subject to the Army Act, 1950 and since at present, the petitioner is not in Army service, therefore, Section 3(o) of the Armed Forces Tribunal Act, 2007 has no application under the facts and circumstances of the case. It is

further submitted that as per the provisions of Section 2 of the Armed Forces Tribunal Act, 2007, the provisions of the said Act shall apply to all the persons who are subject to the Army Act, 1950 and, therefore, the case of the petitioner is not covered by the provisions of the Armed Forces Tribunal Act, 2007. To buttress his contention, the counsel for the petitioner has relied upon the judgment dated 24/11/2015 passed by Allahabad High Court in the case of **Union of India through Secretary and two others vs. Kapil Kumar** in Special Appeal No.833 of 2015 and the judgment dated 18th May, 2018 passed by the Supreme Court in the case of **Lt.Col.Vijaynath Jha vs. Union of India and Others** in Civil Appeal No.2020 of 2013.

(4) Heard the learned Counsel for the parties.

(5) It is well-established principle of law that the Legislature has not used any word without any meaning and the Court while interpreting the statutory provision must try to give its due meaning. It is also well-established principle of law that no word is used without any specific meaning. The word of a statute should be first understood in their natural, ordinary and popular sense and phrases and sentences should be construed according to their grammatical meaning unless it leads absurdity or the object of the statute suggests contrary.

(6) The word "appointment" used in Section 3(o)(ii) of the Armed Forces Tribunal Act, 2007 has significance. The word "appointment" means any dispute with regard to appointment to the Armed Forces. According to the counsel for the petitioner, unless and until, the petitioner becomes subject to the Army Act, his case would not be covered by the

definition of "service matters". If the contention raised by the petitioner is accepted, then there will be a head on collision between the words "subject to the Army" and "appointment" used in Section 3(o)(ii) of the Armed Forces Tribunal Act. Construction of provision should be made to avoid inconsistency or repugnancy within the Section. The word "appointment" would necessarily mean that the petitioner is not in the Army but he is seeking appointment by challenging his non-selection. The provision of one part of Section cannot be used to defeat the other unless it is impossible to effect reconciliation between them. Thus, where a recruitment process was undertaken by the Army, and a person by virtue of his Selection would become subject to the Army, then challenge of non-selection would also be covered by the word "appointment" as used in Section 3(o)(ii) of the Armed Forces Tribunal Act, 2007. Section 3(o)(iv) of the Armed Forces Tribunal Act is a residuary clause. Thus, if Section 3(o)(ii) & 3(o)(iv) of Armed Forces Tribunal Act are read together, then challenge to recruitment process would be covered by the definition of "service matters".

(7) So far as the judgment of Allahabad High Court in the matter of ***Kapil Kumar (supra)*** is concerned, the importance and meaning of word "appointment" as mentioned in Section 3(o)(ii) of the Armed Forces Tribunal Act, 2007 has not been taken into consideration. Therefore, this Court is of the considered opinion that the recruitment process undertaken by the Army for appointment to the Armed Force would be covered by word "appointment" as mentioned in Section 3(o)(ii) of the Armed Forces Tribunal Act, 2007 and accordingly, the petition filed by the petitioner under Article 226 of Constitution of India, thereby

challenging the recruitment process/ non-selection for the post of Soldier Trademan is not maintainable before the High Court.

(8) Accordingly, this petition is **dismissed with liberty** to the petitioner that if he so desires, then he can approach the Armed Forces Tribunal.

(G.S. Ahluwalia)
Judge

MKB*