

Hon'ble Sharad Kumar Sharma, J.

Mr. G.D. Joshi, Advocate for the petitioner.

Mr. Sanjay Bhatt, Advocate for the respondents.

The Government of India, vide its notification issued in the Official Gazette on 28th December, 2007, the President of India had given assent to the Armed Forces Tribunal Act, 2007. As a consequence of the enforcement of the said Act, 2007, the Tribunal has been constituted under Section 4 of the Act, which is entrusted with the powers to deal with the service matters related to the army personnel, personnel belonging to Indian Navy and Air Forces.

Admittedly, the petitioner was a Sepoy in the Armed Forces and had been discharged from the services on medical grounds, thus, the provisions of Army Act, 1950 is made applicable to him.

The challenge in the writ petition is to the order of discharge dated 27.02.2017. The petitioner in the writ petition has sought the following reliefs :-

“i. a writ, order or direction in the nature of certiorari commanding the respondents to set aside the Medical Board proceedings held on 31.12.2016 and approved / confirmed by the competent Medical authorities on 04.02.2017 at MH, Ranikhet against the aggrieved petitioner and consequently setting aside the Discharge Certificate / Order dated 27.02.2017.

ii. a writ, order or direction in the nature of mandamus directing the respondents to take back the petitioner in Army service as Sepoy (G.D.) immediately w.e.f. 01.06.2015 due to wrongful disqualification on medical grounds, the petitioner was diagnosed under disease External Hemorrhoids by the Lt. Col.Lalit Kumar Gupta, S.R.M.O. K.R.C. Ranikhet under the first spell of Army Recruitment of

the petitioner, which on referment got the disability confirmed by the Specialist in MH, Bareilly on or before 01.06.2015 causing his final rejection in the recruitment Rally as Sepoy (G.D.) in the Army Recruitment Rally and that the above said disease Hemorrhoids was found to be NAD in subsequent Army Recruitment as Sepoy (G.D.) on 19.08.2016 as per paragraphs 2 to 4 of the Writ Petition.

Or

iii. a writ, order or direction in the nature of mandamus directing the respondents to re-instate the petitioner into Army service w.e.f. 27.02.2017 immediately recalling him for Army Training ceasing on 29.09.2016 as the petitioner, who was medically fit on 19.08.2016 for recruitment as Sepoy (G.D.) undergoing the Army Training up to 29.09.2016 was considered to be diagnosed and Generalized Seizure under his sudden fallen down due to tiresomeness after finishing the day's Army Training on 29.09.2016 as per paragraphs 4 to 6 of the writ petition.

Or

iv. Issue a writ, order or direction in the nature of Mandamus commanding the respondents to pay pensionary benefits for the disability under disease Generalized Seizure for 20% disability rounded to 50% being aggravated due to commencement Army Training from 01.08.2016 before his discharge from service w.e.f. 27.02.2017.

v. Issue a writ, order or direction in the nature of Mandamus commanding the respondents to refund Rupees 15243/- with the petitioner has been compelled to deposit through MRO with PAO (OR) on account of expenditure incurred on training on 24.07.2017 contrary to the Rules of law also a sum of Rs.5000/- in account of misc. expenditure incurred by the Petitioner in carrying out the instructions of Army Authorities after his discharge for Army Service from 27.02.2017 to 03.03.2017 until his arrival at home may also paid to the petitioner being jobless.

vi. Any suitable writ, order or direction which the Hon'ble High Court may deem fit and proper to rehabilitate the Petitioner for ends of justice under these unique circumstances of the case.

vii. Award the cost of the entire litigation till finalization of the case favourably under this writ petition of the petitioner."

This order falls to be within the purview of the definition of service matter as provided under Sub-section (o) of Section 3 of the Act. Thus, the remedy available to the petitioner would be to approach before the Tribunal as defined under Sub-section (q) of Section 3 of the Act.

This Writ Petition is dismissed on account of availability of efficacious statutory remedy.

(Sharad Kumar Sharma, J.)

Dated 28.02.2019

Shiv