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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 2098/2019

INDIAN SHORT SERVICE COMMISSIONED OFFICERS
ASSOCIATION (ISSCOA)Petitioner

Through: Ms. Shama Sinha, Mr. Sumit Sinha,
Ms. Pooja Singh, Advocates

versus

UNION OF INDIARespondent

Through: Ms. Monika Arora, CGSC with
Mr.Subhrodeep Saha, Advocate
Major Anish Muralidhar and Captain
Carolyn Johnson (Army)

+ W.P.(C) 8006/2019

ALL INDIA SHORT SERVICE COMMISSIONEDPetitioner

Through: Mr. Arun Bhardwaj, Senior Advocate
with Mrs. Pallavi Awasthi and
Ms.Neha Mishra, Advocates

versus

UNION OF INDIARespondent

Through: Mr. Nitinjya Chaudhry, Senior Panel
Counsel with Mr. Rahul Mourya,
Advocate
Major Anish Muralidhar and Captain
Carolyn Johnson (Army)

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

ORDER



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25.08.2025

1. W.P.(C) 2098/2019 has been filed with the following prayers:-

“A. Issue a writ of mandamus against the Respondent and directing the Respondent to grant full pensionary benefits to all emergency commissioned officers / widows, on account of their extraordinary contribution for not just the period of service but also the entire reserve liability for which they were bound.

B. Issue a writ directing the Respondent to grant full pensionary benefits on pro rata basis to short service commissioned officers, including women special entry, for the actual period of service rendered by them and also consideration for the reserved liability, during which they could be called back at the discretion of the respondent and not discriminate between ex-servicemen, by creating an artificial discrimination of ex-servicemen with pensionary benefits and ex-servicemen with no pensionary benefits.

C. Direct the Respondent not to discriminate between ex-servicemen, by creating an artificial discrimination of ex-servicemen with pensionary benefits and ex-servicemen with no pensionary benefits;

D. Pass any other appropriate order(s) or direction(s) in favour of the Petitioner which this Hon’ble Court may deem just and proper in the facts and circumstances of the case, in the interest of justice.”

2. W.P.(C) 8006/2019 has been filed with the following prayers:-

“(i) To call the records relating to the commissioning and retiring benefits including pensionary benefits in respect of ECOs and SSCO.

(ii) To direct the respondents to grant the Pensionary benefits (including pro-rata and OROP as well) to the



ECOs and SSCOs.

(iii) To declare Clause No.2 as embodied in the letter dated 08.05.2019 by PCDA as unconstitutional, ultra-virus, void, illegal, arbitrary, unreasonable, discrimination and unsustainable in the eyes of law as the same extends benefits of pension to the Short Service Commission Officers (SSCOs) from PBOR ranks having total reckonable qualifying service of 12 years or more, whereas the said benefits has discriminately not been provided to the SSCOs directly commissioned and served even more than 12 years of service as commissioned officers.

(iv) To direct the respondents to frame an appropriate policy to grant pensionary benefits on pro-rata basis to Emergency Commissioned Officers and Short Service Commissioned Officers and benefit be extended to all released ECOs/SSCO's / Widows.

(v) Any other order/s as this Hon'ble Court may deem fit and proper in the interest of justice and fairness."

3. The grievance of the Petitioners is *"second hand treatment meted out to Short Service Commission Officers (SSCOs) in depriving them of pensionary and other benefits"* that are given to Commissioned Officers under Regulations 29 and 30 of the Pension Regulations for the Army, 1961 and corresponding regulations of Navy and Air Force.
4. Material on record indicates that the Petitioners are associations of Short Service Commissioned Officers/Emergency Commissioned Officers of Army, Air Force and Navy, who had earlier approached this Court with identical prayers by filing W.P.(C) 9350/2018.
5. When the said writ petition was listed, the Registry had raised an



objection regarding the maintainability of the writ petitions before the High Court. When the learned Counsel appearing at that point of time was enquired as to why the Petitioner approached this Court when the remedy lies before the Armed Forces Tribunal, learned Counsel for the Petitioner sought leave to withdraw the said writ petition reserving the right to approach the Armed Forces Tribunal for appropriate relief in terms of Armed Forces Tribunal Act, 2007. Noting the said contention, the writ petition was dismissed as withdrawn *vide* Order dated 06.09.2018.

6. Material on record shows that pursuant to the said withdrawal, the matter was taken up by the association before the Armed Forces Tribunal.

7. On the administrative side of the Armed Forces Tribunal, the O.A. was not found to be entertainable on the ground that it is filed by an Association. The Communication dated 13.11.2018 refusing to entertain the petition on the ground that the petition has been filed by an Association is reproduced in its entirety and the same reads as under:-

“Sir,

With reference to the above matter which was filed in the Registry of AFT, PB, New Delhi on 30th October, 2018, vide Dy No.5946/2018, on behalf of the Indian Short service Commissioned Officers Association (ISSCOA).

I am directed to inform you that on preliminary scrutiny of the petition, the same was found to be defective on the ground that the applicant Indian Short service Commissioned Officers Association is not covered under Section 2 (1) and 2 (2) of the Armed Forces Tribunal Act, 2007. Section 2(1) and 2(2) of AFT Act applies only to the serving personnel or to retired personal subject to the Army Act, 1950(46 of 1950),The Navy Act, 1957(62 of of 1957) and the Air



Force Act, 1950(45 of .1950), and also apply to retired personnel subject to the Army Act, 1950, or 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.

On being mentioned, the matter was placed before the Hon'ble Chairperson, on administrative side, when the above OA was found to be not entertainable on the above ground. Therefore no action is called for in the matter. Hence, the same is being returned to you. ”

8. Pursuant to the said Order passed by the Armed Forces Tribunal on the administrative side and not on the judicial side, the Petitioners have approached this Court by filing the instant writ petitions.
9. Objection regarding the maintainability of these writ petitions have been raised by the Court, however, Orders dated 26.07.2019 and 09.07.2024, have been passed by this Court directing the Petitioner to give the details of the Members of the Association and file the Authority Letters permitting the Association to maintain the challenge before this Court. Authority Letters have been filed before this Court to show that the members of the Association will be entitled to maintain the petition for the relief sought for. The said Orders have been complied with.
10. When the matter came up for hearing on 23.05.2025, it was noted that substantial arguments regarding jurisdiction are yet to be addressed by the parties.
11. Ms. Monika Arora, learned CGSC for the Union of India, raised a preliminary objection that these matters ought to be dealt with by the Armed Forces Tribunal at the first instance.
12. The Petitioners are Short Service Commissioned Officers. Section



2(1) of the Armed Forces Tribunal Act, 2007 shows that the provisions of the Act applies to all persons subject to the Army Act, 1950, Air Force Act, 1950 and the Navy Act, 1957 and also to all retired personnel subject to the Army Act, 1950, Air Force Act, 1950 and the Navy Act, 1957.

13. To take Army Act, 1950 as an illustration, Section 2(1)(a) of the Army Act which deals with persons subjected to the Army Act, 1959, wherein Act is applicable to the Officers, Junior Commissioned Officers and Warrant Officers of the regular Army.

14. Section 3 (xviii) and Section 3 (xxi) of the Army Act, 1950, defines ‘Officer’ in the following manner:-

“3. (xviii) "officer" means a person commissioned, gazetted are in pay as an officer in the regular Army, and includes-

(a) an officer of the Indian Reserve Forces;

(b) an officer holding a commission in the Territorial Army granted by the President with designation of rank corresponding to that of an officer of the regular Army who is for the time being subject to this Act;

(c) an officer of the Army in India Reserve of Officers who is for the time being subject to this Act;

(d) an officer of the Indian Regular Reserve of Officers who is for the time being subject to this Act;

(f) in relation to a person subject to this Act when serving under such conditions as may be prescribed, an officer of the Navy or Air Force; but does not include a junior commissioned officer, warrant officer, petty officer or non- commissioned officer;



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3. (xxi) "regular Army" means officers, junior commissioned officers, warrant officers, noncommissioned officers and other enrolled persons who, by their commission, warrant, terms of enrolment or otherwise, are liable to warrant, terms of enrolment or otherwise, are liable to Union in any part of the world, including persons belonging to the Reserve Forces and the Territorial Army when called out on permanent service;"

15. Section 10 of the Army Act, 1950 deals with Commission and Appointment. The same reads as under:-

"10. Commission and appointment. The President may grant, to such person as he thinks fit, a commission as, an officer, or as a junior commissioned officer or appoint any person, as a warrant officer of the regular Army."

16. Section 21 of the Army Act, 1950, reads as under:-

"21. Power to modify certain fundamental rights in their application to persons subject to this Act.

Subject to the provisions of any law for the time being in force relating to the regular Army or to any branch thereof, the Central Government may, by notification, make rules restricting to such extent and in such manner as may be necessary the right of any person subject to this Act-

(a) to be a member of, or to be associated in any way with, any trade union or labour union, or any class of trade or labour unions or any society, institution or association, or any class of societies, institutions or associations

(b) to attend or address any meeting or to take part in



any demonstration organised by any body of persons for any political or other purposes

(c) to communicate with the press or to publish or cause to be published any book, letter or other document.”

17. A perusal of the above shows that every Short Service Commission Officer, who is a Commissioned Officer, would be subject to the provisions of the Army Act, 1950, and the Regulations thereunder. The same view has been taken by the High Court of Madras in Judgment dated 29.11.1968 passed in Harcharan Singh Premi v. The Officer Commanding Army, Military Hospital, **1968 SCC OnLine Mad 257**. The relevant portion of the said Judgment reads as under:-

“4. The facts are not in dispute. The petitioner was appointed as a Commissioned Officer by the President on 18-2-1967, and was a temporary Commissioned Officer. The Army Act, 1950, is applicable to the persons mentioned in Section 2 of the Act, Section 2(1)(a) states that Officers, Junior Commissioned Officers and Warrant Officers of the Regular Army are persons subject to the Act. An “Officer” is defined under Section 3(xviii) as meaning ‘a person Commissioned, Gazetted or in pay as an officer in the Regular Army’ and includes persons enumerated in clauses (a) to (f) in the definition. Section 10 provides that the President is the authority to grant a Commission to an Officer. It cannot be disputed that the petitioner is an Officer within the definition as he is a person Commissioned and Gazetted as an Officer in the Regular Army. Section 18 of the Act provides that every person subject to the Army Act, shall hold office during the pleasure of the President, Section 19 specifies that subject to the provisions of the Act and Rules and Regulations made thereunder, the Central



Government may dismiss, or remove from the service, any person subject to this Act Section 20 prescribes a procedure by which a person could be dismissed, removed or reduced in rank. The Chief of the Army Staff, may dismiss or remove from service any person other than an Officer. Section 191 enables the Central Government to make rules for the removal, retirement, release or discharge from service of persons subject to this Act, For persons who are subject to this Act, the termination of service will be according to the provisions of the Army Act and the Rules and Regulations framed thereunder. The Act does not specifically provide for the dismissal or removal or reduction of Officers and, therefore such dismissal or removal can only be by the Rules framed or Regulations made under the Act. The rule-making power is under Section 191(1)(a). Rule 15 of the Army Rules, 1954, prescribes the procedure for termination of service by the Central Government on grounds other than misconduct. The rule provides:

“(1) When the Commander-in-Chief is satisfied that an officer is unfit to be retained in the service due to inefficiency, or physical disability, the officer—

(a) shall be so informed,

(b) shall be furnished with the particulars of all matters adverse to him, and

(c) shall be called upon to urge any reasons he may wish to put forward in favour of his retention in the service.

(2) In the event of the explanation being considered by the Commander-in-Chief unsatisfactory, the matter shall be submitted to the Central Government for orders, together with the Officer's explanation and the recommendation of the Commander-in-Chief as to



whether the Officer should be—

(a) called upon to retire; or

(b) called upon to resign.

(3) The Central Government after considering the reports, the explanations, if any, of the Officer and the recommendation or the Commander-in-Chief, may call upon the Officer to retire or resign, and on his refusing to do so, when called upon, may take action to have him gazetted out of the service on pension or gratuity, if any, admissible to him.”

Rule 15, thus contemplates the Officer being informed by the Commander-in-Chief (now the Chief of the Army Staff) along with the particulars of all matters adverse to him, viz., to afford an opportunity to the Officer to urge the reasons in favour of his retention in service. After considering the explanation, the Chief of the Army Staff is required to submit a report to the Central Government and the Central Government after considering all the materials before them should take a decision. It is not in dispute in this case that this procedure was not adopted.

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6. A reading of the Sections cited makes it clear that a temporary Commissioned Officer comes within the definition of Section 3(xviii) of the Act. The Act does not maintain any distinction between a permanent Officer and a temporary Officer. It would have been open to the Central Government to have framed rules under Section 19 providing for the mode of dismissal or removal of a temporary Commissioned Officer. It has also been admitted that no regulations have been framed for dismissal or removal of a temporary Commissioned Officer. The contention of the learned



counsel for the Central Government is that the Act is not applicable to a temporary Commissioned officer. This contention cannot be accepted for it will lead to very dangerous results. On a plain reading of Section 3(xviii), all Officers who have been Commissioned, whether temporary or permanent, will be subject to the provisions of this Act. If the construction sought to be placed by the learned counsel for the Central Government is accepted, it would mean that temporary Commissioned Officers would not be governed by the Army Act and would not be subject to the discipline under the Army Act. This situation was considered by a Bench of this Court in Chatterjee v. Sub-Area Commander, Head-quarters, Madras, ILR (1952) Mad 153 : (AIR 1951 Mad 777). The Court was dealing with the case of a Short Service Commissioned Officer. The Court held that a Short Service Commissioned Officer as soon as he takes up the Commission will become subject to the provisions of the Army Act by virtue of Section 2(2) and he will remain so subject until he is duly discharged. Repelling the contention that the Officer in that case occupied the position of a Reserve Officer and not subject to any Rules and Regulations, the Court observed:

“Any other decision will result in a piquant situation; for example, if a temporary Commissioned Officer, the moment the term of his service expires, runs away with a equipment that is given to him, according to the petitioner, he cannot be subject to the Military law and discipline and cannot be arrested and produced before a Court Martial but the Military authorities should avail themselves of the ordinary remedies before the criminal Courts of the land. We need only refer to the situation so created to show the untenability of the contention.”

These observations are applicable to the case of a temporary Commissioned Officer. He cannot say he is



not subject to the Army discipline. Therefore, the contention that a temporary Commissioned Officer is not a person subject to the Act will have to be negated. If a temporary Commissioned Officer is subject to the provisions of the Army Act, he can only be dismissed or removed under the provisions of the Act, the Rules or Regulations. As already pointed out, the Act does not provide for the procedure for such removal. The procedure provided under Rule 15 which relates to the dismissal and removal had not been followed. It is also admitted that there are no Regulations regarding the procedure for dismissal or removal of a temporary Commissioned Officer. The Central Government only relies on paragraph 12 of the Army Instructions. Under Section 19 of the Army Act, the procedure to be followed is according to the provisions of the Act, the Rules and the Regulations, under the Act. Therefore the petitioner cannot be removed by following Army Instructions. Army Instructions are in the nature of administrative directions and they cannot have the effect of modifying the statutory right of the petitioner. The Central Government, if they wanted to treat the temporary Commissioned Officers on a different footing, ought to have framed appropriate Rules or Regulations. That has not been done.”

18. Therefore, the short question which arises for consideration is when a Commissioned Officer under the Army Act, 1950, is subject to the Armed Forces Tribunal Act, 2007, why should the Armed Forces Tribunal refuse to entertain a petition filed by a group of officers, who have formed a registered Association to espouse their case arising out of the conditions of service of the Indian Army.

19. The fact that on the administrative side, the Armed Forces Tribunal has refused to entertain the application, the same has also to be decided on



the judicial side of the Armed Forces Tribunal.

20. Section 14 of the Armed Forces Tribunal Act, 2007 deals with the jurisdiction, powers and authority in service matters, 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) On receipt of an application relating to service matters, the Tribunal shall, if satisfied after due inquiry, as it may deem necessary, that it is fit for adjudication by it, admit such application; but where the Tribunal is not so satisfied, it may dismiss the application after recording its reasons in writing.

(4) For the purpose of adjudicating an application, the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of



documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing an application for default or deciding it ex parte;

(h) setting aside any order of dismissal of any application for default or any order passed by it ex parte; and

(i) any other matter which may be prescribed by the Central Government.

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

(emphasis supplied)

21. Undoubtedly, Section 14 of the Armed Forces Tribunal Act, 2007 states that the petition can be filed under Article 226 & 227 of the Constitution of India before this Court, and therefore, the petition is undoubtedly maintainable. However, the question still remains as to whether a petition filed by an Association should be entertained by the High Court in view of an alternate remedy available under the Armed Forces Tribunal Act, 2007.

22. The Officers herein are retired and are Senior Citizens. To ask the Officers, at this juncture, to withdraw these petitions and approach the



Armed Forces Tribunal once again will not meet the ends of justice. Resultantly, the entire records of this Court which includes the instant petitions, counter affidavit, rejoinder, and the written submissions are transmitted to the Armed Forces Tribunal for a decision as to whether these petitions are maintainable before the Armed Forces Tribunal or not so that if the petitions are maintainable, then the Armed Forces Tribunal can proceed with the hearing on merits expeditiously.

23. In view of the fact that these petitions are pending before this Court for the last seven years, the Armed Forces Tribunal is requested to consider the maintainability of this petition before the Armed Forces Tribunal within a period of four weeks from today.

24. In case the Armed Forces Tribunal is of the opinion that the petition is not maintainable, then the records be re-transmitted to this Court so that this Court can proceed ahead for hearing of the matter on merits.

25. With these observations, the petitions are disposed of as transferred to the Armed Forces Tribunal.

26. Let the records of these cases be transmitted to Armed Forces Tribunal forthwith, not later than 10 days from today.

SUBRAMONIUM PRASAD, J

VIMAL KUMAR YADAV, J

AUGUST 25, 2025

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