
(2011) 08 KL CK 0103
In the High Court Of Kerala
Case No : O.P. (AFT) No. 2527 of 2011

A. Shihabudeen

APPELLANT

Vs

The MD, Army Group Insurance Fund and Others

RESPONDENT

Date of Decision : 17-08-2011

Acts Referred:

Armed Forces Tribunals Act, 2007 — Section 2(2), 3(o)(i), 3(o)(ii), 3(o)(iii), 3(o)(iv)
Army Rules, 1950 — Rule 205(b)
Group Insurance Scheme, 1980 — Rule 9

Citation : (2011) 4 KLJ 848 : (2011) 4 KLT 760

Hon'ble Judges : P.S. Gopinathan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : B. Harish Kumar, for the Appellant; P. Parameswaran Nair (ASG) and Mohan Idicula Abraham (SC), for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—Order under challenge is one issued by the Armed Forces Tribunal, Kochi Bench holding that the Tribunal has no jurisdiction to settle claims made by army personnel against the Army Group Insurance Fund (AGIF). The petitioner after serving army as a Junior Commissioned Officer got released after he sustained injury in an army operation. Though he was granted regular pension, he was declined war injury pension and disability benefit under the AGIF. Therefore, the petitioner filed Writ Petition before this Court for relief against the Armed Forces as well as against the AGIF On formation of the Armed Forces Tribunal (AFT), the WP(C) was transferred to the AFT, Kochi Bench which vide Ext.P3 order allowed the claim of the petitioner on both accounts. In other words, he was declared to be eligible to get pension reckoning war injury as well as insurance benefit for the injury suffered by him, from the AGIF. It so happened that in the proceedings before the AFT, AGIF though was a party was not separately represented by counsel because the Central Government Standing Counsel took notice and defended the matter without instructions from the AGIF. Therefore, there was no occasion for the AGIF to raise objection against the

petitioner's claim on merit. The AFT on finding the petitioner's eligibility for war injury pension, held that for the very same reason the petitioner is entitled to insurance benefit as well. However, after the AFT decided the case in favour of the petitioner, the AGIF filed a review petition before AFT contending that the Tribunal has no jurisdiction to pass orders against the AGIF because it is a Society registered under the Societies Registration Act, and the same does not come under the Army Act. The AGIF also relied on the findings of the Principal Bench of the AFT, New Delhi, which also held that the Tribunal has no jurisdiction to decide any claim against the AGIF. The AFT, Kochi Bench, following the decision of the Principal bench, allowed the review petition by Ext.P4 order recalling the earlier order issued in favour of the petitioner, namely Ext.P3, and declared that it has no jurisdiction to entertain petitioner's claim against the AGIF. It is against this order of the Tribunal, the petitioner has filed this OP(AFT).

2. We have heard learned counsel for the petitioner, learned Standing Counsel appearing for the AGIF and also the Assistant Solicitor General appearing for the remaining respondents.

3. Before proceeding to consider the question raised, we have to keep in mind the consequence of the order of the Tribunal, which is multiplicity of litigation for getting retirement benefit to an army person released on disability. The very object of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as the Act for short) under which the AFT is constituted as revealed from its preamble is to provide a forum for settlement of disputes on all service matters of defence personnel covered by the three Acts. As a consequence of the view taken by the Tribunal, the petitioner has now got partial relief from the Tribunal and for part of the retirement benefit which is the insurance benefit that is entitled under the AGIF, he has to probably file a civil suit because writ is also not maintainable in the High Court against the Society registered under the Societies Registration Act. In our view, the interpretation placed on the statutory provisions on its powers by the Tribunal will defeat the object of the Act i.e. to provide a single Forum for settlement of disputes on all service matters relating to service personnel under the Army, Navy and Air Force Act including their disputes on retirement benefits. Keeping this in mind, we proceed to consider the scope of powers of the AFT. There is no dispute that every service personnel in Army is bound to be a member of the AGIF and he has to make contribution compulsorily which under Rule 205(b) of Army Rules is recoverable at the prescribed rate by the Army, and as the employer the Army remits it to the AGIF. Every army personnel, who is a compulsory member of the AGIF and a contributor, is entitled to the insurance benefit from the AGIF under Rule 9 of the Group Insurance Rules. Admittedly, eligible benefit is payable on retirement. In this case, as against the claim of disability benefit, the petitioner was given maturity benefit.

4. Learned Standing Counsel appearing for the AGIF submitted that the view taken by the AGIF is that since the petitioner was discharged on request he is not entitled to disability benefit. We do not wish to consider this issue on merit

because in our view the matter requires reconsideration by the AGIF itself based on Ext.P3 order issued by the AFT declaring petitioner's eligibility for war injury pension. However, we proceed to decide the question raised in this case, i.e. whether the AFT has jurisdiction to decide claims against the AGIF.

5. Learned counsel for the petitioner has raised a specific contention that the petitioner's claim against the AGIF is nothing but a claim for retirement benefit covered by Section 3(o)(i) of the Act. Section 2(2) of the Act specifically says that the Act applies to all retired personnel subject to Army Act, Navy Act or the Air Force Act, including then dependents, heirs and successors, in so far as it relates to their service matters. Section 3(o)(i) defining service matters is as follows:--

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

xxxx

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(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,

(Emphasis supplied)

What is clear from the above is that disputes on all service matters including those relating to retirement benefits are to be settled by the Tribunal. All service matters including those relating to retirement benefits are covered by the inclusive definition clauses of Section 3(o)(i) to (iv) and the excluded items specified there under in sub clauses (i) to (iv) do not include insurance claim against AGIF. So much so, it is very clear that the insurance benefit available to the petitioner from the AGIF on retirement or on release from service squarely falls under clause(i) as forming part of service matters on which the Tribunal is bound to decide the dispute raised against the AGIF. In our view, the Tribunal wrongly assumed that it cannot pass any orders against the AGIF because it is not an Organisation coming under the Army Act, but is only a registered Society. Disputes on service matters including those relating to retirement benefits of Defence personnel is covered by the Army, Navy and Air Force Acts. We have already found that Insurance claim under the Compulsory Insurance Scheme

managed by the AGIF is part of the retirement benefit of Defence personnel, and so much so, the dispute between the service personnel and the AGIF is one relating to service matter on which the Tribunal has to decide. If the Tribunal considered as to what they should decide and not against whom they should decide, they would have found that the petitioner's claim squarely falls u/s 3(o) (i) of the Act which the Tribunal was bound to decide.

We, therefore, allow the O.P.(AFT) by vacating the order of the Tribunal and restore the application filed by the petitioner before the Tribunal for them to hear the AGIF and settle the dispute on merit without any delay. The Tribunal is directed to pass final orders in the matter within two months from date of receipt of copy of this judgment.

This OP(AFT) is allowed as above.