
(2021) 03 AFT CK 0017

In the Armed Forces Tribunal

Case No : Original Application No. 1466 Of 2019, Miscellaneous Application No. 2374 Of 2019

Amar Sinha

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 16-03-2021

Acts Referred:

Armed Forces Tribunal (Procedure) Rules 2008 — Rule25
Code Of Civil Procedure, 1908 — Order2 Rule 2

Citation : (2021) 03 AFT CK 0017

Hon'ble Judges : Sunita Gupta, J;B.B.P. Sinha, Member (A)

Bench : Division Bench

Advocate : Ajit Kakkar, Ashok Chaitanya

Final Decision : Dismissed

Judgement

MA 2374 /2019

1. Vide this application filed under Rule 25 of the Armed Forces Tribunal (Procedure) Rules 2008, the applicant seeks grant of leave for filing the OA for grant of service element of disability pension.

It is the case of the applicant that he was granted Permanent Regular Commission in the Army through Union Public Service Commission on 16.12.1978. In October. 1992 while playing Basketball in Unit Lines as part of organized games, he suffered injuries and was diagnosed with CHRONIC SNOVITIS WITH TEAR MEDICAL MENISCUS KNEE (RT), disability was assessed @ 20% fully attributable to military service. The applicant was granted premature retirement from service on 28 10.1993.

OA 1402 of 2016 was filed claiming disability pension and vide order dated 02.08.2017, the applicant was granted disability element of pension. However at that time, the applicant had not prayed for grant of service element of disability pension. He filed another OA 1804 of 2018 which was dismissed as withdrawn on

13.11.2018. Present application has been filed by the applicant seeking leave of the Tribunal for grant of service element.

We have heard learned counsel for the parties and have perused the record.

Record reveals that the applicant filed OA 1402 of 2016 seeking disability element of pension. Vide order dated 02.08.2017, OA was allowed and the applicant was granted disability element of pension.

Thereafter, another OA 1804 of 2018 was filed seeking service element of pension. Counsel for the respondents objected to the maintainability of the OA on the ground that the same was barred by Order II Rule 2 of the CPC 1908 inasmuch as when the earlier OA 1402 of 2016 was filed by the applicant claiming disability element of pension, he could have claimed service element of pension as well. Neither that was done nor any leave of the Court for filing fresh OA was sought by the applicant. At that stage, counsel for the applicant drew the attention of the Tribunal to para 8 of the order dated 02.08.2017 whereby the Tribunal stated that the claim of the applicant for ESM status will be examined by the respondents and in case the applicant still feels aggrieved, he will be at liberty to approach the Tribunal. However, no liberty was granted to him to file fresh OA seeking service element of pension. Grant of ESM status was not the subject matter of OA 1804 of 2018. Under those circumstances, learned counsel for the applicant withdrew the OA.

Now the present OA has been filed seeking grant of service element of pension and the application under Rule 25 of the AFT (Procedure) Rules 2008 has been moved for grant of leave to file the present OA for claiming benefit of service element.

Rule 25 of the AFT (Procedure) Rules 2008 reads as under:-

"25. Powers of the Tribunal with regard to certain orders and directions.-- Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice".

A bare perusal of this Rule goes to show that the Tribunal can pass an order or give direction which is necessary to give effect to its orders or to prevent abuse of this process or to secure the ends of justice.

Order II Rule 2 of the CPC so far is relevant for the present purpose reads as under:-

2. Suit to include the whole claim.

1. Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

2. Relinquishment of part of claim:

Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished.

3. Omission to sue for one of several reliefs:

A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted."

Order II, Rule 2 is based on the principle that the respondents should not be twice vexed for one and the same cause. The rule is directed against two evils, the splitting of claims and the splitting of remedies. It provides that if a claimant/applicant omits any portion of the claim, which he is entitled to make or any of the remedies which he is entitled to claim in respect of the cause of action for his suit/petition, he shall not thereafter sue for the portion claimed or for the remedy so omitted. Sub Section (3) clarifies that if the applicant is entitled to more than one relief in respect of the same cause of action he may sue for all or any such reliefs; but if without obtaining the leave of the Court, he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

While filing first OA 1402 of 2016, the applicant could have claimed service element of pension. However, only disability element of pension was claimed by him, therefore, when the subsequent OA 1804 of 2018 was filed by him, an objection was taken by the respondents regarding the maintainability of the OA under Order II Rule 2 and the applicant simply withdrew the OA.

Learned counsel for the applicant has failed to satisfy the Tribunal as to how now the Tribunal can grant leave to the applicant to file the present OA. Inherent powers of the Tribunal has to be exercised for securing the ends of justice. If such a leave is now granted to the applicant that will be contrary to the orders passed on 13.11.2018 and will also abuse the process of the Court which is not warranted. That being so, the present case is not covered within the four corners of Rule 25 of AFT (Procedure) Rules 2008 and the application deserves dismissal. Same is accordingly dismissed.

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In view of dismissal of MA 2374 of 2019, the OA is not maintainable. Same is accordingly dismissed. Parties are however, directed to bear their own costs.

Announced in open Court on 16th march 2021.