
(2015) 02 P&H CK 0257
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8173 of 2013

Baldev Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-02-2015

Acts Referred:

Armed Forces Tribunals Act, 2007 — Section 14
Constitution Of India, 1950 — Article 323A, 323B
Administrative Tribunals Act, 1985 — Section 22(3)

Citation : (2015) 2 SCT 413

Hon'ble Judges : Surya Kant, J;Raj Mohan Singh, J

Bench : Division Bench

Advocate : Ram Naresh Ojha, for the Appellant; Kamla Malik, Advocates for the Respondent

Judgement

Surya Kant, J.—The question that arises for consideration in this case is whether the Original Application No. 434 of 2012 filed by the petitioner before the Armed Forces Tribunal, Chandigarh Regional Bench (hereinafter referred to as "the Tribunal") was barred by principle of res judicata? The Tribunal has dismissed the above stated Application on the premise that the issue raised therein was earlier given up by the petitioner in the previous O.A. No. 484 of 2010 decided on 08.11.2011, hence the second petition was barred by principle of res judicata. Since the petitioner statedly did not approach the Tribunal with clean hands, he has been slapped with costs of Rs. 10,000/- also.

2. The petitioner was enrolled in the Indian Army as a Sepoy on 23.11.1967. He is said to have sustained injuries during Indo-Pak War, 1971. He was placed in the low medical category as "BEE(T)" on 26.09.1974 but after taking treatment he recovered from the injury and was consequently upgraded by the Medical Board as "AYE" on 30.01.1985. The petitioner was again placed in low medical category with 20% disability on account of injury sustained by him while he was on leave and was consequently discharged from Army Service on 30.11.1991.

3. The petitioner's claim for disability element of pension was rejected on the premise that the disability was not attributable to nor aggravated by the military service. The petitioner thereafter filed O.A. No. 484 of 2010 before the Tribunal for the grant of disability pension on both counts i.e. (i) the war-injury allegedly suffered during Indo-Pak War, 1971 and (ii) the disability caused on account of injury sustained while he was on leave in the year 1983.

4. During the pendency of the above-stated Original Application, the petitioner's counsel made a statement before the Tribunal on 08.07.2011 to the effect that the petitioner did not want to press for the grant of war injury service benefits. He restricted his disability pension claim only on account of the injury sustained while the petitioner was on leave. Counsel for the petitioner further stated that he wants to file an amended petition. The prayer was allowed and the case was listed on 29.08.2011.

5. The petitioner then filed "Amended Application under Section 14 of the Armed Forces Tribunal Act, 2007 for grant of disability pension on account of injury sustained on 30.04.1983 during authorised annual leave." On a plain reading of the amended Original Application (Annexure P-6) reveals that no claim whatsoever was raised by the petitioner on the basis of the injury allegedly suffered by him during Indo-Pak War, 1971.

6. The above stated amended Original Application came to be decided by the Tribunal vide a common order dated 08.11.2011 whereby bunch of petitions on identical issue were allowed.

7. The Tribunal vide its order dated 08.11.2011 neither formulated any question in relation to the fact of injury, if any, suffered by the petitioner in the Indo-Pak War, 1971 nor such an issue was adjudicated inter-parties on merits.

8. That being an admitted fact, we have no doubt in our mind that at least the principle of res judicata, constructive or otherwise, could not be attracted or applied by the Tribunal as the principle of res judicata would apply only when the lis was inter-parties and had attained finality in respect of the issues involved.

9. In a given case, where a party to the lis volunteer to fore go a part of its claim and presses for adjudication of the remaining claim, the principle of waiver and consequential estoppel can be pressed into aid against such party in respect of the given up claim, if such a claim is re-agitated at a subsequent stage.

10. Equally important is that the Tribunal is not a civil Court. *Nahar Industrial Enterprises Ltd. Vs. Hong Kong and Shanghai Banking Corporation*, (2009) 10 JT 199 : (2009) 10 SCALE 360 : (2009) 8 SCC 646 : (2009) 12 SCR 54 , clarifies that all Courts are Tribunals but all Tribunals are not Courts. Further, in *Mr. Shaikh Salim Haji Abdul Khayumsab Vs. Mr. Kumar and Others*, AIR 2006 SC 396 : (2006) 101 CLT 464 : (2005) 10 JT 1 : (2006) 142 PLR 284 : (2006) 1 SCC 46 : (2006) 1 UJ 89 : (2005) AIRSCW 6031 : (2005) 8 Supreme 43 , Hon'ble Supreme Court has held that the procedural law is not to be a tyrant but a

servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. It was further observed that the procedural law so dominates in certain systems so to overpower substantive right and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable.

11. In *The State of West Bengal and Others Vs. Kamal Sengupta and Another*, (2008) 8 JT 317 : (2008) 8 SCC 612 : (2008) 2 SCC(L&S) 735 : (2008) 3 SLJ 209 : (2009) 2 SLR 482 , the Apex Court held that, Articles 323-A and 323-B were inserted in the Constitution in the backdrop of pendency of large number of cases and these Articles enable Parliament to make laws for creation of alternative adjudicatory forums comprising of experts i.e. the Tribunals with exclusive jurisdiction, power and authority to deal with and decide the entrusted disputes. With a view to achieve the object underlying enactment of Article 323-A i.e. expeditious adjudication of service disputes/complaints, the Tribunals established under the Act have been freed from the shackles of procedure enshrined in CPC but, at the same time, they have been vested with the powers of civil court in respect of some matters. For example, the Administrative Tribunal is not bound by the procedure laid down in CPC, yet according to S. 22(3) of the 1985 Act, it can exercise powers of a civil court in relation to matters enumerated in clauses (a) to (i) of this Section, including power of reviewing its decision.

12. In the given scenario where the petitioner's anxiety was to secure disability pension along with other litigating Applicants whose similar cases were also pending before the Tribunal, the petitioner cannot be said to have voluntarily given up his claim for the grant of service benefit, if he is so entitled to, on the basis of the injury alleged to have been suffered in Indo-Pak War, 1971. The principle of estoppel also thus cannot be invoked against the petitioner.

13. For the reasons afore-stated, we are of the considered view that it is imperative upon the Tribunal to re-adjudicate the petitioner's claim re: war injury pension on the basis of the alleged injury suffered in Indo-Pak War, 1971.

14. We thus, without expressing any views on merits of the said claim set aside the order of the Tribunal and remit the case to it for fresh adjudication. The parties are directed to appear before the Tribunal on 16.03.2015.