

(2011) 03 MAD CK 0242

In the Madras High Court

Case No : Writ Petition No. 23735 of 2010 and M.P. No. 2 of 2010

Capt. Nataraja Gopalakrishnan

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Armed Forces Tribunals Act, 2007 — Section 14
Constitution of India, 1950 — Article 226, 323A, 323B

Citation : (2011) 03 MAD CK 0242

Hon'ble Judges : Elipe Dharma Rao, J;D. Hariparanthaman, J

Bench : Division Bench

Advocate : V. Prakash, SC and K. Sudalai Kannu, for the Appellant; M. Ravindran, ASG for K. Ravichandra Baabu, SPC, for the Respondent

Judgement

Elipe Dharma Rao, J.—When the Miscellaneous Petition filed in M.P. No. 2 of 2010 came up for consideration, with the consent of the

learned Counsel for the parties, the main writ petition itself is taken up for disposal.

2. Against the order of rejection dated 22.7.2010 passed by the Armed Forces Tribunal, Chennai in O.A. No. 22 of 2010 wherein the impugned

orders passed by the Respondents were assailed by the Petitioner, the Petitioner has filed the present writ petition.

3. The Petitioner is an Ex-service man. He joined the Indian Air force on 14.8.1951 and completed his regular term of engagement on 13.8.1960.

Thereafter, he was transferred to the Air Force Reserve on 14.8.1960. After serving in several posts, finally he was released from the Army on

18.4.1967 and was sanctioned pension in 1973 with effect from 01.7.1969. In the meanwhile, the Petitioner joined the services of Hindustan

Aeronautics Limited and retired from service after attaining the age of superannuation. During such service, he had not drawn any pension from

Hindustan Aeronautics Limited. Pursuant to the recommendations of the Fifth Pay Commission, the Petitioner made representation to revise his

pension. Therefore, he filed W.P. No. 31533 of 2004 and thereafter, his pension was revised to Rs. 1,894/-from 01.01.1996. Since the qualifying

service was not correctly fixed, the Petitioner once again preferred W.P. No. 14228 of 2005 to give weight age of 5 years and pension be fixed

accordingly. The said writ petition was disposed of by directing the Petitioner to make a fresh representation to the first Respondent. On the

subsequent representations made by the Petitioner, based on the order of the Director (Pension/Policy) dated 11.11.2008, which provides that it

would be applicable to all pre-01.01.2006 pensioners of the Armed Forces, the pension was fixed at Rs. 9024/-fixing 12.5 years as qualifying

service, without giving weight age of 5 years. But, to the shock and surprise, by order dated 03.6.2009, the Petitioner was informed that the

Ministry has issued order dated 20.5.2009 for revision of Pension of Pre-1996 retiree and the Petitioner was requested to approach the office.

Subsequently, by order-dated 03.9.2009, the pension was revised with effect from 01.01.2006. The aforesaid two orders came to be challenged

by the Petitioner before the Armed Forces Tribunal, Regional Bench, Chennai, in O.A. No. 22 of 2010, which came to be dismissed as not

maintainable with liberty to challenge the impugned orders before the appropriate forum. Aggrieved by the said order, the Petitioner is before us.

4. In the above factual scenario, the point that arises for consideration is whether the writ petition is maintainable before this Court or not?

5. The Tribunal, by relying on Section 14 of the Armed Forces Tribunal Act, 2007 (in short "the Act"), to the extent that the Tribunal has no

jurisdiction to entertain the petition relating to service matters which arises under Article 226 of the Constitution of India and it is not constituted

under Article 323A or under 323B of the Indian Constitutional Law, dismissed the O.A. as not maintainable.

6. Since the issue revolves round the Act, it would be profitable to extract the relevant provisions of the Act. The preamble of the Armed Forces

Tribunal Act, 2007 enacted on 25th December 2007 reads as follows:

An Act to provide for the adjudication or trial by Armed Forces Tribunal of disputes and complaints with respect to commission, appointments, enrolment and conditions of service in respect of persons subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950 and also to provide for appeals out of orders, findings or sentences of Court-Martial held under the said Acts and for matters connected therewith or incidental thereto.

7. Further, the Objects and Reasons of the Act read as follows:

The existing system of administration of justice in the Army and Air Force provides for submission of statutory complaints against grievances relating to service matters and pre and post confirmation petitions to various authorities against the findings and sentences of Courts-Martial

...

3. ...it is proposed to enact anew legislation by constituting an Armed Forces Tribunal for the adjudication of complaints and disputes regarding service matters and appeals arising out of verdicts of the Courts-Martial of the members of the three service (Army, Navy and Air Force) to provide for quicker and less expensive justice to the members of the said Armed Forces of the Union.

8. A reading of the aforesaid objects and reasons would show that the main object for which the Tribunal has been constituted is for the adjudication of complaints and disputes regarding service matters and appeals arising out of verdicts of the Courts-Martial of the members of the three service (Army, Navy and Air Force) to provide for quicker and less expensive justice to the members of the said Armed Forces of the Union. It is not in dispute that service matter includes payment of pension. It is to be noticed that just like constitution of other Administrative Tribunals like Central Administrative Tribunal / State Administrative Tribunal, which is constituted for the general service of the State and Central Government, the Armed Forces Tribunal has been constituted to entertain and dispose of the matters relating to the three services of the Nation, viz., Army, Navy and Air Force.

9. It is further made clear in the Objects and Reasons of the Act that the Tribunal will oust the jurisdiction of all Courts except the Supreme Court whereby resources of the Armed Forces in terms of manpower, material and time

will be conserved besides resulting in expeditious disposal of the cases and reduction in the number of cases pending before various Courts and ultimately, it will result in speedy and less expensive dispensation of justice to the Members of the abovementioned three Armed Forces of the Union.

10. When a Tribunal has been specifically constituted with a laudable object for the redressed of the grievances of the three Forces of the Nation,

denying the same to the Members of the Forces on the ground that it is not constituted as per Article 323A and 323B of the Indian Constitutional

Law cannot be accepted. Moreover, in view of the assertion made by the Respondents in paragraph 2 of the counter to the effect that the writ

petition before this Court is not maintainable and the Petitioner has to only approach the Tribunal, we are of the considered view that the Tribunal

has committed an error in rejecting the Application of the Petitioner.

11. The Supreme Court in *Rajeev Kumar and Another Vs. Hemraj Singh Chauhan and Others*, in paragraph 11 held as follows:

On a proper reading of the above quoted two sentences, it is clear:

(a) The tribunals will function as the only court of first instance in respect of the areas of law for which they have been constituted.

(b) Even where any challenge is made to the vires of legislation, excepting the legislation under which tribunal has been set up, in such cases also,

litigants will not be able to directly approach the High Court "overlooking the jurisdiction of the tribunal.

12. In view of the aforesaid decision of the Supreme Court and also considering the fact that the Petitioner is aged 76 years old and has retired

from the services of Armed Forces from a respectable post of Captain after working for more than 17 years, the order dated 22.7.2010 passed

by the Armed Forces Tribunal, Chennai in O.A. No. 22 of 2010 is set aside and the Original Application is restored on the file of the Tribunal with

a direction to consider and dispose of the O.A. within a period of four weeks from the date of receipt of a copy of this order. This writ petition is

disposed of accordingly. No costs. Connected Miscellaneous Petition is closed.