

(2010) 10 UK CK 0119

In the Uttarakhand High Court

Case No : Delay Condonation Application No. 8855 of 2010 and Restoration Application No. 894 of 2010 in Writ Petition (S/S) No. 1270 of 2009

Havaladar Keshav Dutt Bhatt

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-10-2010

Acts Referred:

Armed Forces Tribunals Act, 2007 — Section 14, 14(1), 34
Constitution of India, 1950 — Article 226, 227

Citation : (2010) 10 UK CK 0119

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Judgement

B.S. Verma, J.—Heard Mr. Pradeep Hairiya & Mr. Ravi Joshi, Advocates for the petitioner and Mr. H.S. Rawal, Standing Counsel for respondents on delay condonation application as well as on restoration application.

2. I find sufficient ground to condone the delay in filing restoration application. The delay condonation application is allowed and the delay in filing the restoration application is condoned.

3. The petitioner has shown sufficient reasons for non appearance of his counsel in the case on the date when the petition was dismissed in his absence. Therefore, the restoration application is allowed and the petition is restored to its original number.

4. Learned Counsel for the parties agreed to hear the petition today itself. Therefore, I proceed to hear the petition.

5. By means of this writ petition, the petitioner has sought the following relief:

A. Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 13-10-1999 passed by respondent No. 1 and the order dated 15-8-1997 passed by the respondent No. 4 (Annexure No. 6 and 4 respectively).

B. Issue a writ, order or direction in the nature of mandamus directing the respondents to pay disability pension to the petitioner along with 10% interest thereon.

C. Issue any other writ, order or direction, which this Hon''ble Court may deem fit and proper in the facts and circumstances of the case.

D. Award the cost.

6. Learned Counsel appearing for the Union of India, Mr.H.S. Rawal, has submitted that now the jurisdiction to decide the controversy involved in the present writ petition is vested in the Armed Forces Tribunal.

7. I have perused the provisions of Section 14 and Section 34 of the Armed Forces Tribunal Act, 2007.

8. Sub-section (1) of Section 14 of the Armed Forces Tribunal Act, 2007 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.

9. Section 34 of the Armed Forces Tribunal Act, 2007 reads as under:

34. Transfer of pending cases.-(1) Every suit, or other proceeding pending before any court including a High Court or other authority immediately before the date of establishment of the Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based, is such that it would have been within the jurisdiction of the Tribunal, if it had arisen after such establishment within the jurisdiction of such Tribunal, stand transferred on that date to such Tribunal.

(2) Where any suit, or other proceeding stands transferred from any court including a High Court or other authority to the Tribunal under Sub-section(1)-

(a) the court or other authority shall, as soon as may be, after such transfer, forward the records of such suit, or other proceeding to the Tribunal;

(b) the Tribunal may, on receipt of such records, proceed to deal with such suit, or other proceeding, so far as may be, in the same manner as in the case of an application made under Sub-section (2) of Section 14, from the stage which was reached before such transfer or from any earlier stage or de novo as the Tribunal may deem fit.

10. Having considered the submissions of the learned Counsel for the respondents, I am satisfied that the jurisdiction to hear the present writ petition is vested with the Armed Forces Tribunal u/s 14(1) of the Armed Forces Tribunal Act, 2007. Therefore, in terms of Section 34 of the Armed Forces Tribunal Act,

2007, the present writ petition would stand transferred to the Tribunal.

11. Accordingly, the Registry of this Court is directed to transfer the writ petition to the Armed Forces Tribunal concerned u/s 34 of the Armed Forces Tribunal Act, 2007.