
(2014) 02 AHC CK 0191
In the Allahabad High Court
Case No : C.M.W.P. No. 2029 of 2014

Ishwar Prasad

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 03-02-2014

Acts Referred:

Armed Forces Tribunals Act, 2007 — Section 3(o), 14
Constitution Of India, 1950 — Article 14, 15, 16, 32, 226, 227, 323A, 323B

Citation : (2014) 3 ADJ 111 : (2014) 103 ALR 163 : (2014) 3 AWC 2430

Hon'ble Judges : Manoj Misra, J

Bench : Single Bench

Advocate : Sanjay Kumar Singh, Advocate for the Appellant; R.B. Singhal, A.S.G.I., Sanjay Kr. Yadav, Satish Ghaturvedi and S.K. Rai, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Manoj Kumar Gupta, J.—The petitioner who is an ex-army personnel has filed this writ petition claiming retiral benefits. Sri R.B. Singhal, senior advocate/ Assistant Solicitor General of India, assisted by Sri S.K. Rai advocate has raised a preliminary objection regarding maintainability of the writ petition. It is contended that in view of the provisions of the Armed Forces Tribunal Act, 2007, hereinafter referred to as "Act", the petitioner has efficacious remedy of approaching the Tribunal, as laid down by the Apex Court in the case of L. Chandra Kumar Vs. Union of India and others, . He has also placed reliance on the judgment of learned Single Judge of this Court dated 26.11.2013 passed in writ petition No. 64424 of 2013. Sri Jitendra Kumar Pandey advocate who has appeared on behalf of respondent No. 4, has supported the contention of Shri Singhal.

2. Counsel for the petitioner, placing reliance on the judgment of the Apex Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, , submitted that where there is violation of fundamental rights, the

availability of alternative remedy is not an absolute bar for exercise of jurisdiction by this Court. He has also placed reliance on the judgment of the Apex Court in D.S. Nakara and Others Vs. Union of India (UOI), wherein, it was held that the pension is not a bounty but a right conferred on a retired employee for the valuable services rendered by him in the hey-day of his service time. He has also placed reliance on another judgment in State of Jharkhand and Others Vs. Jitendra Kumar Srivastava and Another, .

3. Armed Forces Tribunal, Act 2007 has been enacted in exercise of power under Article 323-A of the Constitution. Section 3(o) of the Armed Forces Tribunal Act, 2007 (hereinafter referred as the Act), defines "the service matters" and Clause (1) thereof, includes remuneration (including allowances), pension and other retirement benefits. Section 14 of the Act confers jurisdiction to the Armed Forces Tribunal in relation to all service matters. Therefore, the dispute relating to payment of retiral dues comes within the purview of service matters as defined u/s 3(o) of the Act.

4. While interpreting the scheme of Administrative Tribunal Act, 1985 the Constitutional Bench of the Apex Court in L. Chandra Kumar v. Union of India, (supra) held that in matters coming under the jurisdiction of the Tribunal, it will not be open for the litigant, to directly approach the High Courts. It was observed that:

The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other Courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunal will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.

(Emphasis supplied)

5. Similar view was taken by the supreme Court in the case of Kendriya Vidyalaya Sangathan and Another Vs. Subhash Sharma etc. and R.D. Vishwakarma and Others, . It was observed as under:

At the same time, as laid down in Chandra Kumar, the High Court ought not to permit the aggrieved person to bypass the remedy of moving the Administrative Tribunal in the first instance.

6. I am of the opinion that in cases of Armed Forces Tribunal constituted under the Act, the same analogy will apply.

7. The question which now arises is whether writ should be entertained because the petitioner alleges violation of constitutional rights. Controversy in this regard is also no more res-integra, in view of the authoritative pronouncement of the Apex Court in the same case of L. Chandra Kumar v. Union of India (supra), wherein, it was held that the Tribunal also has the power to go into issues regarding infraction of constitutional rights. It was held as under:

.....It has been contended before us that the Tribunal should not be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Moreover, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted.

(Emphasis supplied)

In view of the above, I am of the opinion that the petitioner has the remedy of approaching the Armed Forces Tribunal, in the first instance. Therefore, the writ petition is dismissed, leaving it open to the petitioner to avail the said remedy.