
(2013) 04 RAJ CK 0097
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5416 of 2003

Sepoy Balkaran Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-04-2013

Acts Referred:

Armed Forces Tribunals Act, 2007 — Section 14(2), 34, 34(1)
Pension Regulations For Army, 1961 — Regulation 173, 173A

Citation : (2013) 2 WLN 544

Hon'ble Judges : Sandeep Mehta, J; Narendra Kumar Jain, J

Bench : Division Bench

Advocate : K.K. Shah and Mr. N.R. Choudhary, for the Appellant; V.K. Mathur, A.R. Godara and Mr. Ankur Mathur, for the Respondent

Final Decision : Disposed Off

Judgement

Narendra Kumar Jain, J.—Heard learned counsel for the parties. Learned Single Judge vide its order dt. 17.05.2007, while disagreeing with the view taken by Single Bench of this Court in Pratap Singh Rathore vs. Union of India & Ors., 2005 WLC (Raj.) UC 740, framed a question to be answered by Larger Bench and directed the registry to place the matter before Hon"ble The Chief Justice for constitution of Larger Bench. Hon"ble The Chief Justice constituted this Bench for answer to the question, which is reproduced as under:--

WHETHER an army personnel discharged from service under Regulation 173-A of the Pension Regulations for Army-1961, for the grant of disability pension is not subject to the governing factors given under Regulation 173, those are (1) disability should be either attributable to or aggravated by military service; and (2) the disability must be a non-battle casualty and assessed at 20% or over?

2. Learned counsel for petitioner, without arguing the question of reference, submitted that order of reference was passed way back on 17.05.2007, whereas the Armed Forces Tribunal Act, 2007 (hereinafter referred to as "the Act of 2007" for convenience) came into force with effect from 30.06.2008 i.e. after passing of

order of reference by learned Single Judge. He submitted that by virtue of Section 34 of the Act of 2007, the Armed forces Tribunal has got jurisdiction in respect of points involved and the prayer made in the writ petition. He, therefore, submitted that this Court has now got no jurisdiction to decide the writ petition on merits. He submitted that since the Armed Forces Tribunal has come into existence and the case stands automatically transferred by virtue of force of law in view of Section 34, this writ petition may be transferred to Armed Forces Tribunal.

3. Learned counsel for respondents submitted that question framed and referred in the case has already been considered and decided by Hon''ble Apex Court in Sukhwant Singh Vs. Union of India (UOI) through the Secretary, Ministry of Defence and Others, .

4. We have considered the submissions of learned counsel for the parties and we find that order of reference by learned Single Judge was made way back on 17.05.2007, the Armed Forces Tribunal came into existence on 30.06.2008. There is no dispute between the parties that Armed Forces Tribunal has jurisdiction to decide all the questions involved and prayer made in the present writ petition.

5. Prayer made in the writ petition is reproduced as under:--

(i) The order dtd. 28.12.2002 (Annex. 2) be declared illegal and be quashed and the respondents be directed to reinstate the petitioner in service as Sepoy (Rect.), 13 BTW, Basic Training Regiment, AC Centre and School, Ahmed Nagar with all consequential benefits.

(ii) Without prejudice to above prayer (i) the respondents be directed to provide shelter appointment/alternative employment in sepoy rank.

(iii) Without prejudice to above prayer (i) and (ii) and in the alternative if this Hon''ble Court comes to a conclusion that action of the respondents is justified upto the extent of sending him out of Army service, then the respondents be directed to pay disability pension to the petitioner as per Regulations of 1961 and also he may be issued discharge book as per Army Rules and all other benefits of an ex-serviceman may be extended to him.

(iv) Any other appropriate writ, order or direction which this Hon''ble Court considers just and proper in the facts and circumstances of the present case, may kindly be passed in favour of the petitioner.

(v) Cost of the writ petition may kindly be awarded to the petitioner.

6. Section 34 of the Act of 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.

7. From Sub-section (1) of Section 34, it is clear that 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.

8. In these circumstances, we find force in the submissions of learned counsel for petitioner that this case stands transferred to Armed Forces Tribunal, Jaipur and there is no need to give answer to the question under reference.

9. Consequently, we transfer this writ petition for disposal on merits to Armed Forces Tribunal, Jaipur. Registry is directed to send file of this Court to the Tribunal immediately. Parties are directed to appear before Armed Forces Tribunal, Jaipur on 04.07.2013, as prayed. Since this matter relates to Jodhpur, therefore, Tribunal will either hear the case at Jaipur or will transfer the same to Circuit Bench at Jodhpur. This writ petition may be treated as disposed of.