

(2012) 05 AHC CK 0027
In the Allahabad High Court
Case No : C.M.W.P. No. 20294 of 2012

Surendra Bahadur Singh

APPELLANT

Vs

Armed Forces Tribunal, Regional Bench, Lucknow and Others

RESPONDENT

Date of Decision : 02-05-2012

Acts Referred:

Armed Forces Tribunals Act, 2007 — Section 3(o), 30(2), 31(1)
Constitution of India, 1950 — Article 226, 227, 32

Citation : (2012) 5 AWC 4799

Hon'ble Judges : Virendra Vikram Singh, J; Vineet Saran, J

Bench : Division Bench

Advocate : R.A. Pandey, for the Appellant; S.K. Rai, A.S.G.I., for the Respondent

Final Decision : Dismissed

Judgement

Vineet Saran and Virendra Vikram Singh, JJ.—Heard Col. (Retd.) R.A. Pandey, learned counsel for the petitioner as well as Sri R.B. Singhal, Additional Solicitor General of India alongwith Sri S.K. Rai, learned counsel appearing for the respondents No. 2 to 8.

By means of this petition, the petitioner is challenging the order of the Tribunal dated 7.9.2011 whereby Transfer Application No. 1467 of 2010 of the petitioner has been partly allowed and certain prayers of the petitioner have been rejected.

A preliminary objection has been raised by Sri R.B. Singhal that in view of the Division Bench judgment of this Court in the case of Surendra Bahadur Singh Vs. Armed Forces Tribunal, Regional Bench, Lucknow and Others, , writ petition against the judgment of Tribunal would not be maintainable. The conclusion of the said judgment has been given in para 43, which is quoted below:

Conclusion

43. On the aforesaid discussion, we are of the view that the A.F.T. Act, 2007 does not take away or violate the right of judicial review under Article 226/227 and

Article 32 of the Constitution of India. The writ petitions under Article 226 of the Constitution of India would be maintainable, where-

- (a) it pertains to challenge against the constitutional validity of any of the provisions of the A.F.T. Act, 2007;
- (b) in the matters relating to armed forces excepted from the jurisdiction of the A.F.T. u/s 3 (o) of the A.F.T. Act, 2007;
- (c) in the matters of interlocutory orders passed by the A.F.T.;

However, no writ will lie in the High Court:

- (a) in contempt matters where statutory appeal is provided to the Supreme Court u/s 30 (2) of A.F.T. Act, 2007;
- (b) against final orders of the A.F.T., in which an appeal lies to Supreme Court u/s 31 (1) of A.F.T. Act, 2007;
- (c) under Article 227 of the Constitution of India.

2. Learned counsel for the petitioner has submitted that the present writ petition is maintainable because the application of the petitioner filed u/s 31 (1) of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as the "Act") has been rejected whereby the certificate for leave to appeal to the Supreme Court has been refused. It is thus contended by Sri Pandey that once the Tribunal has refused to grant the certificate for leave to appeal before the Supreme Court, the applicant would have no remedy except to approach this Court under Article 226 of Constitution of India.

3. Section 31 (1) of the Act provides as under:

Leave to appeal.--(1) An appeal to the Supreme Court shall lie with the leave of the Tribunal; and such leave shall not be granted unless it is certified by the Tribunal that a point of law of general public importance is involved in the decision, or it appears to the Supreme Court that the point is one which ought to be considered by that Court.

A perusal of the aforesaid Section makes it clear that the appeal before the Supreme Court against the order of Tribunal would lie with the leave of the Tribunal or if it appears to the Supreme Court that the point is such which ought to be considered by the Court. Leave by the Tribunal may be granted only when the Tribunal certifies that a point of law of general importance is involved in the decision. If the Tribunal refuses to grant the leave, then the petitioner can approach the Supreme Court as Section 31 (1) itself provides that an appeal to the Supreme Court would lie if a point is such which ought to be considered by it.

Hence, in the light of Judgment in Surendra Kumar (supra) and the provision of Section 31 (1) of the Act, we are of the opinion that this writ petition against the order is not maintainable. The petitioner may approach such other alternative forum available to him for redressal of his grievances.

The writ petition is accordingly dismissed. There shall be no order as to costs.