
(2014) 02 KL CK 0184
In the High Court Of Kerala
Case No : O.P. (AFT) No. 6 of 2014

Venugopal P.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-02-2014

Acts Referred:

Armed Forces Tribunal (Procedure) Rules, 2008 — Rule 6, 6(1), 6(2)

Citation : (2014) 2 ILR 415 : (2014) 2 KHC 185 : (2014) 2 KLJ 672 : (2014) 2 KLT 314 : (2014) LabIC 2593

Hon'ble Judges : T.B. Radhakrishnan, J;A. Muhamed Mustaque, J

Bench : Division Bench

Advocate : Rajesh Nair and Bijoy Chandran, Advocate for the Appellant; P. Parameswaran Nair, Assistant Solicitor General of India, Advocate for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—Petitioner challenges the decision of the Kochi Regional Bench of the Armed Forces Tribunal holding that his application would not lie before that Bench; on an issue of territorial jurisdiction, in view of Rule 6(1) of the Armed Forces Tribunal (Procedure) Rules, 2008. He was posted or is, for the time being, attached to the unit in Agra. The cause of action, as deducible from the original application filed by him before the Kochi Bench of the Tribunal refers to matters exclusively outside the territorial domain of that Regional Bench, and, apparently within the territorial domain of the Regional Bench within which Agra would fall. Rule 6 of the Rules provides the place of filing application. It has two sub-rules. Sub-rule (2) deals with the jurisdiction that may be invoked by a person who has ceased to be in service by reason of his retirement, dismissal, discharge, cashiering, release, removal, resignation or termination of service. At the option of such a person, territorial jurisdiction is statutorily available, where that person is ordinarily residing at the time of filing of the application. In contrast, sub-rule (1) of Rule 6 provides that an application shall ordinarily be filed by the applicant before the Bench within whose jurisdiction (i) the applicant is posted for the time being, or was last posted or attached; or (ii)

where the cause of action, wholly or in part, has arisen. The option available to a person in terms of Rule 6(2) is not available to those who fall within the terms of sub-rule (1). This is the position on the basis of the Rules.

2. Faced with the aforesaid situation, petitioner's learned counsel persuasively pointing out that the Statement of Objects and Reasons to the Armed Forces Tribunal Act, 2007, appears to indicate, among other things, that the constitution of the Tribunal is also to provide quicker and less expensive justice to the members of the Armed Forces of the Union, and in that premise, it may be held that that part of cause of action includes the permanent residential address of the petitioner, since such view will augment real justice. We are unable to accede to that. The Rules are statutory and are framed in terms of the authority conferred under the Act. Statutory rules cannot be watered down by making reference to the Statement of Objects and Reasons or any provision of the parent Act, unless it is concluded that they contradict or overstep the prescriptions of that Act or are in excess of the rule making power.

3. Petitioner's learned counsel also made reference to the decision of the Armed Forces Tribunal, Kochi Regional Bench, in Prem Kumar P. and Another v. Chief of Air Staff, AIR HQ and Others 2010 (3) KHC 869 on the question of jurisdiction. We have gone through that order. The facts of that case clearly show that the grievance of the petitioners in that matter was about the refusal of the establishment to consider their request for discharge on compassionate grounds referable to family situations. It is obvious that it was therefore that their representations were treated as made from the respective permanent residential addresses. It was in that context that the Tribunal held that part of cause of action arose before the Bench of the Tribunal within whose jurisdiction the permanent residence of the applicant is. That decision rests on the facts of that case and cannot be applied to the facts of the case in hand. For the aforesaid reasons, this original petition fails.

In the result, this original petition is dismissed in limine.