

(2013) 12 DEL CK 0235

In the Delhi High Court

Case No : Writ Petition (C) No. 7754 of 2013 and CM No. 16506 of 2013

Wing Commander Ravi Mani (Retd.)

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-12-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20

Citation : (2013) 6 ILR Delhi 4751

Hon'ble Judges : Gita Mittal, J;Deepa Sharma, J

Bench : Division Bench

Advocate : Inderjit Singh, for the Appellant; Himanshu Bajaj, CGSC for R-1 to 4, for the Respondent

Final Decision : Allowed

Judgement

Gita Mittal, J.

CM No. 16506/2013

1. Allowed, subject to just exceptions.

WP (C) No. 7754/2013

The petitioner in the instant case assails the order dated 20th November, 2013 passed by the Armed Forces Tribunal (AFT), Principal Bench, New Delhi in OA No. 444/2013 praying for quashing of the PPO No. 08/14/A/Rev. 3407/2013 dated 31st May, 2013 and an order passed by the Principal Director, Directorate of Air Veterans, New Delhi, respondent no. 3 herein, dated 27th August, 2013 rejecting the representation of the petitioner.

2. The petitioner in the instant case is an officer of the Indian Air Force serving in the Metrological Branch. The petitioner's request for premature retirement was favourably considered by the respondents and he proceeded on such retirement w.e.f. 28th February, 1997.

3. The petitioner has contended that upon such retirement, he was granted pension benefits taking the reckonable qualifying service for its computation as twenty six years one month and zero days. It appears that a corrigendum was issued on 31st May, 2013 intimating that the Pension Payment Orders (PPOs) have been amended which led to the respondents treating the reckonable service as twenty five years two months and fourteen days resulting in reduction of the pension which was being paid to the petitioner. This order was passed at Delhi by the Deputy Controller of Defence Accounts, Subroto Park, New Delhi, respondent no. 4 herein. The petitioner's representation against the same was rejected by the respondent no. 3 also at Delhi.

4. Aggrieved by these orders, the petitioner had filed the afore-noticed original application before the Armed Forces Tribunal, Principal Bench, New Delhi. This petition was taken up for hearing on 20th November, 2013 and was summarily rejected on the ground that the petitioner was not residing within the jurisdiction of the Principal Bench at New Delhi and, therefore, the Bench did not have the territorial jurisdiction to entertain and adjudicate upon the subject matter of the case.

5. Before us, learned counsel for the petitioner has submitted that even though the permanent address of the petitioner has been reflected as different place beyond the jurisdiction of the court, however, both the impugned orders have been passed at Delhi. Therefore, in terms of Rule 61(ii) of the Armed Forces Tribunal (Procedure) Rules, 2008, the cause of action for filing the petition had arisen wholly within the jurisdiction of the Principal Bench, New Delhi and by virtue of sub-rule 1(ii) of Rule 6 of the Armed Forces Tribunal (Procedure) Rules, 2008. As such, the Principal Bench at New Delhi had territorial jurisdiction to entertain and adjudicate upon the subject matter of the case.

6. We have heard learned counsel for the parties on the matter in issue which is raised in this petition. Our attention has been drawn to a similar issue which was decided by an order dated 21st February, 2013 passed in WP (C) No. 1096/2013 Lt. Col. Alok Kaushik (Retd.) Vs. Union of India & Ors before this court in similar circumstances which supports the case of the petitioner.

7. Before considering the factual aspect of the matter, we may firstly advert to the rule position. In this regard, Rule 6 of the Armed Forces Tribunal (Procedure) Rule, 2008 is relevant and reads thus:-

6. Place of filing application (1) An application shall ordinarily be filed by the applicant with the Registrar of 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:

Provided that with the leave of the Chairperson the application may be filed with the Registrar of the Principal Bench and subject to the orders u/s 14 or section 15 of the Act, such application shall be heard and disposed of by the Bench which

has jurisdiction over the matter.

(2) Notwithstanding anything contained in sub-rule (1), a person who has ceased to be in service by reason of his retirement, dismissal, discharge, cashiering, release, removal, resignation or termination of service may, at his option, file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application.

8. A bare reading of Rule 6 would show that sub-rule 1(ii) of the Rule, in fact, confers discretion upon a retired force person to file the petition before a Bench within whose jurisdiction he is ordinarily residing at the time of filing of the application. Even otherwise, sub-rule 1(ii) of Rule 6 further mandates that an application shall ordinarily be filed before the Bench within whose jurisdiction the cause of action wholly or in part has arisen. In the instant case, both the impugned orders have been passed at Delhi. Therefore, the Principal Bench, New Delhi would have the territorial jurisdiction to entertain and adjudicate upon the subject matter of the case.

9. In this regard, we may also usefully refer to the observations of this court in Lt. Col. Ashok Kumar (Retd.) Vs. UOI (supra) wherein the court held thus:-

10. It is apparent from the provision itself that the choice of instituting a proceeding or application before the Tribunal is with the petitioner/applicant. He can choose any of the following places:

(i) where the applicant is posted (or attached) for the time being.

(ii) (where the applicant) was last posted or attached; or

(iii) where the cause of action, wholly or in part, has arisen:

Unlike in the case of Section 20 of the CPC, which mandates that the place where the defendant resides or works for gain, or where the cause of action arises, in whole or in part, the choice of selecting the forum in the case of matters covered by the Armed Forces Tribunal is wider; it can be exercised by the applicant. Interestingly, the applicant can even approach the Bench of the Tribunal having jurisdiction over the place where he was last posted or attached.

11. In the present writ petition, considering the totality of the facts and circumstances and observing that the competent authority which ordered the PMR and later rejected the request of the Petitioner for cancellation of the PMR order is situated in Delhi, it can be said that the Principal Bench of the Armed Forces Tribunal had the jurisdiction to adjudicate the disputes of the petitioner pertaining to his application of cancellation of premature retirement. In the circumstances, the order of the Tribunal directing the application of the petitioner to be sent to the Lucknow Bench of the Armed Forces Tribunal cannot be justified.

10. Learned counsel for the petitioner has also contended that though his permanent residence is in Belgaon, however, he ordinarily resides at New Delhi with his offspring at the address which was also reflected in the memo of parties

placed before the Principal Bench. The Principal Bench, New Delhi would have jurisdiction over the subject matter by application of Rule 6(2) as well. This aspect has been completely overlooked.

11. In view of the above, the order dated 20th November, 2013 is hereby set aside and quashed. The matter shall stand remanded to the Armed Forces Tribunal, Principal Bench, New Delhi for hearing on the merits of the rival contentions. The parties shall appear before the Registrar of the Armed Forces Tribunal on 15th January, 2014 for further directions in the matter.

This writ petition is allowed in the above terms.

Dasti to counsel for the parties.