

ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW

TA No. 164 of 2009

Wednesday, the 7<sup>th</sup> November, 2012

“Hon’ble Mr. Justice Janardan Sahai, Member (J)  
Hon’ble Lt. Gen. P R Gangadharan, Member (A)”

Virendra Bahadur Singh, aged  
about 24 years, son of Shri  
Ram Bahadur Singh, resident  
of Village and P.S. Ratauli,  
Tehsil Haidargarh, District –  
Barabanki.

..Applicant

By Legal Practitioner Shri P N Chaturvedi,  
Advocate.

Versus

1. Union of India .
2. Rajput Regiment Records, The  
Rajput Regiment Fatehgarh,  
U.P., Pin – 209601 through its  
Record Officer
3. Army Group Insurance  
Directorate, Army Adjutant  
General’s Branch, West Block 5,  
R.K. Puram, New Delhi , through  
its Director.
4. Command Hospital (Central  
Command), Lucknow through  
its Medical officer Incharge.

5. Leftinent Cornal K.E. Rajan  
Classified Specialist (Medicine  
and Chest Diseases) Military  
Hospital, Dehradoon

..Respondents

Connected Case No. TA 1125 of 2010

No - 2473050 Ex. Hav  
Ram Bahadur, Son of Late  
Shri Mewa Ram, R/O  
Village- Kathus, Post  
Office Kanhai, District -  
Etawah

..Applicant

By Legal Practitioner Shri P.N. Chaturvedi, Advocates.

Versus

1. Punjab Regiment Abhilekh  
Karyalaya Records, The Punjab  
Regiment Mangarh Cantt.  
Jharkhand - 829130
2. A.G.I, (Adjutant General's  
Branch) Integrated H.Q. of M.O.D  
(Army) A.G.I. Bhawan, Rao Tula  
Rao Marg, P.O. Basant Vihar,  
Post Bag No. 14, New Delhi -  
110057
3. Union of India Through Secretary  
Defence, Sena Bhawan, New  
Delhi -1.

..Respondents

Connected case TA 680 of 2010

Smt. Suneeta Widow of Late Sri  
Lokendra Pal Singh, At present

residing at House No. T.B.- 24,  
New Colony, Kasimpur Power  
House, District Aligarh

..Applicant

Versus

1. Union of India Through its  
Secretary Ministry of Defence,  
New Delhi
2. Director Army Group Insurance,  
A.G.I. Bhawan, Rao Tula  
Rao Marg, Post Bag No. 14,  
Vasant Vihar, New Delhi - 57
3. Senior Record Officer Rajput  
Regiment Abhilekh Karyalaya,  
Fatehgarh, District - Farukhabad

..Respondents

By Legal Practitioner Shri K D Nag, Sr. Standing Counsel  
Shri R K Singh, Central Government Counsel for the Central  
Govt.  
Shri P K Singh and Shri Ashutosh Kumar holding brief of Shri  
Vinod Kumar Singh, counsel for AGIF.

### ORDER

“Hon’ble Mr. Justice Janardan Sahai”

1. The papers of all the three cases have been transmitted  
to the Tribunal by the High Court after the establishment of  
the Tribunal. The dispute involved in these cases relates to  
the payment of AGIF dues of the applicant in these cases. As  
a common question is involved in all these TAs relating to the  
jurisdiction of the Tribunal regarding AGIF claims in view of

the definition of service matters under section 3(o) of the Armed Forces Tribunal Act, 2007, we had passed an order on 11.10.2012 for taking up these cases together. A doubt has arisen whether the TA of Ram Bahadur pertains to AGIF dues as the relief claimed is not specifically for AGIF and mandamus / certiorari to respondents has been sought to pay a sufficient lump sum amount (Rs 3 or 4 lakhs) to the petitioner and in the TA there is reference to the claim for disability pension but Shri P N Chaturvedi, Ld. Counsel for the applicant has stated that the disability pension has already been granted to the applicant at 75% disability vide Annexure 10 to the TA of Ram Bahadur and that the lump sum payment claim in this case relates only to AGIF dues. It also appears from the counter affidavit of the Union of India Annexure CA-2 and CA 3 that payment of disability benefit covered under Army Group Insurance Scheme in respect of the applicant was examined and he was found not eligible for the reason that he was admitted to hospital in Low Medical Category on the crucial date of commencement of enhanced service. In para 27 of the counter affidavit there is also an averment that the case for payment of AGIF was taken up with the AGI Directorate who have rejected the claim and the Respondents have relied upon Annexure CA 2 and CA -3. In view of these

facts and statement <sup>is</sup> made by Mr. Chaturvedi it appears that the dispute in Ram Bahadur's TA also pertains to AGIF.

2. We have heard Shri P N Chaturvedi in this bunch of cases on behalf of the applicants and Shri Pradeep Kumar Singh, and Shri Ashutosh Kumar Srivastava holding brief of Shri Vinod Kumar Singh, for AGIF and Shri K D Nag, Sr. Standing Counsel and Shri R K Singh, Central Government Counsel on behalf of the other respondents.

3. The payment of AGIF dues is governed by the Army Order 23/2002/AGIF and other Army Orders. It is not in dispute that the AGIF claim is a claim for insurance money and is paid by the Army Group Insurance Fund which is a society registered under the Societies Registration Act 1860.

The question involved in these cases has already been decided by the Principal Bench of the Tribunal in OA 315 of 2009, by the Regional Bench of the Tribunal at Kolkata in TA 209 of 2010 and by the Chandigarh Bench of the Tribunal in OA no. 244 of 2011 Veerendra Kumar Singh Vs. Union of India and Ors decided on 14.11.2011 and also by the Regional Bench of the Tribunal at Lucknow in OA 166 of 2011 Ex - Hav. Sachchidanand Tiwari Vs. Chief of Army Staff and Ors. decided on 14.02.2012. In all these cases the Tribunal has taken the view that the dispute regarding payment of AGIF <sup>is</sup> dues

does not fall within the definition of 'service matters' under section 3(o) of the Armed Forces Tribunal Act, 2007 and a claim therefor is not maintainable in the Tribunal. The Kerala High Court in Shehabudeen V Managing Director 2001 (4) KLT 760 has however taken a different view and has held that an AGIF due is a retirement benefit and therefore covered under the definition of 'service matters'.

4. Shri P N Chaturvedi, Counsel for the applicant submitted that the decisions of the Tribunal referred to above require re-consideration as certain aspects were not considered in those cases. Shri P K Singh, Ld. Counsel for AGIF has cited the Supreme Court decision in Sub Inspector Rooplal and Another Vs. Lt. Governor through Chief Secretary Delhi and Others 2000 (1) Supreme Court Cases 644 in support of his contention that decision of a coordinate bench of the Tribunal is binding upon another coordinate bench. In para 12 of the Reports it was held as follows :

*"12. At the outset, we must express our serious dissatisfaction in regard to the manner in which a coordinate Bench of the tribunal has overruled, in effect, an earlier judgment of another coordinate Bench of the same tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the tribunal was of the*

*opinion that the earlier view taken by the coordinate Bench of the same tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two coordinate Benches on the same point could have been avoided."*

5. In Union of India through Ministry of Defence and Others Vs. Raj Kumar and Ors Writ Petition No. 66197 of 2010 decided on 01.02.2012 by the Allahabad High Court it has been observed that the decision of the High Court shall be binding only on the authorities which are within its jurisdiction. It will only be of persuasive value on the authorities functioning under a different jurisdiction. The decision of the Kerala High Court thus has persuasive value.

6. We shall now consider whether the decision of the Regional Bench Lucknow in Sachchidanand Tiwari's case (Supra) requires reconsideration. In order to appreciate the issue it is necessary to quote relevant portion of section 3(o) of the Armed Forces Tribunal Act which reads as under :

"3....."

*.....  
(o) "service matters" in relation to the persons subject to the Army Act, 1950(46 of 1950), the navy Act, 1957(62 of 1957) and the Air Force Act, 1950(45 of 1950), mean all matters relating*

to the conditions of their service and shall include –

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement; superannuation, termination of service and penal deductions;
- (iii) summary disposal and trials where the punishment of dismissal is awarded;
- (iv) any other matter, whatsoever,  
.....  
.....”

From a reading of this definition it appears that “service matters” mean all matters relating to conditions of service.

Clauses (i) to (iv) which follow after the words “and shall include” cover matters which the legislature has included in the definition as they pertain to conditions of service. If interpreted otherwise and as unconnected to conditions of service clause (iv) “any other matter whatsoever” would remain undefined and of limitless ambit frustrating the very purpose of a definition clause and making redundant the very definition which says that “service matters” means all matters relating to conditions of service. In Secretary Central Board of Direct Taxes and others V Shayam Sunder (2001) 9 SCC 87 while considering the question whether claim for a



certain Reward under a scheme of the Central Board of Direct Taxes falls within the meaning of "service matters" under the Administrative Tribunal Act 1985 the Supreme Court applied the test, which had also been applied by the Tribunal in the order appealed against, whether such Reward is a condition of service and the Supreme Court was of the view that it was difficult to treat it as a condition of service. However the Supreme Court found that it was not necessary to decide the question in depth as it based its decision on another ground. We shall now consider whether a claim for AGIF is a condition of service.

7. Chapter IV of the Army Act bears the heading "Conditions of service" and section 18 to 24 which fall within the chapter deal with tenure of service, Termination of service by Central Government, Dismissal, removal or reduction by the Chief of the Army Staff and others, power to modify certain fundamental rights in their application to persons subject to the Act., Retirement, release or discharge, certificate on termination of service and discharge or dismissal when out of India. Undoubtedly a dispute regarding the claim of AGIF is not covered under any of these provisions relating to conditions of Service under chapter IV.

8. In Lily Kurian Vs. The University Appellate Tribunal 1997 (2) SCT 601 cited by Mr Chaturvedi it was held that “the expression “condition of service” includes everything from the stage of appointment to the stage of termination of service and also relates to matters pertaining to disciplinary action. The description is however not very helpful for deciding the question before us as it is quite general. In State of Punjab Vs. Kailash Nath 1989 (1) Supreme Court Cases 321 the Supreme Court has dealt with the meaning of the expression more elaborately. Para 7 of the decision is quoted below

*“7. In the normal course what falls within the purview of the term “conditions of service” may be classified as salary or wages including subsistence allowance during suspension, the periodical increments, pay scale, leave, provident fund, gratuity, confirmation promotion, seniority, tenure or termination of service, compulsory or premature retirement, superannuation, pension, changing the age of superannuation, deputation and disciplinary proceedings. Whether or not a government servant should be prosecuted for an offence committed by him obviously cannot be treated to be something pertaining to conditions of service. Making a provision that a government servant, even if he is guilty of grave misconduct or negligence which constitutes an offence*

*punishable either under the Penal Code or Prevention of Corruption Act or an analogous law should be granted immunity from such prosecution after the lapse of a particular period so as to provide incentive for ;efficient work would not only be against public policy but would also be counterproductive. It is likely to be an incentive not for efficient work but for committing offences including embezzlement and misappropriation by some of them at the fag end of their tenure of service and making an effort that the offence is not detected within the period prescribed for launching prosecution or manipulating delay in the matter of launching prosecution. Further, instances are not wanting where a government servant may escape prosecution at the initial stage for want of evidence but during the course of prosecution of some other person evidence may be led material may be produced which establishes complicity and guilt of such government servant. By that time period prescribed, if any, for launching prosecution may have expired and in that event on account of such period having expired the government servant concerned would succeed in avoiding prosecution even though there may be sufficient evidence of an offence having been committed by him. Such a situation, in our opinion, cannot be created by framing a rule under Article 309 of the Constitution laying down*

*an embargo on prosecution as a condition of service."*

9. Chapter V of the Army Act bears the Heading Service Privileges. Section 25 which is included in this chapter is relevant for decision of this case. It reads as under :

*"25. Authorised deductions only to be made from pay : The pay of every person subject to this Act due to him as such under any regulation for the time being in force shall be paid without any deduction other than the deductions authorized by or under this or any other Act."*

10. Rule 205 of the Army Rules which is also relevant reads as follows :

*"205. Authorized deductions : The following deduction may be made from the pay, non-effective pay and all other emoluments payable to a person subject to the Act namely :*

- a) Upon the general or special order of the Central Government, any sum required to meet any public claim there may be against him, any regimental debt that may be due from him or any regimental claim;*
- b) Any sum required to meet compulsory contributions to any provident fund or any benevolent or other fund approved by the Central Government."*

11. It is submitted that the premium for obtaining the insurance cover under AGIF is compulsorily deductible from the salary of a serviceman and is considered as authorized deduction within the meaning of Section 25 of the Army Act read with Rule 205 and therefore the claim of AGIF relates to the conditions of service and hence the dispute is maintainable in the Tribunal. The mere fact that the deduction of premium for AGIF is compulsory is not determinative of the question whether the insurance amount payable under the AGIF scheme is a condition of service. Rule 205 permits certain deductions to be made from the pay of an army personnel which includes deduction in respect of any sum required to meet any compulsory contribution to any provident fund or any benevolent or other fund approved by the Central Govt. . In State of Punjab Vs. Kailash Nath (supra) the Supreme Court considered the purpose and effect of a provision under the Punjab Civil Service Rules creating an embargo to prosecution of a retired Govt. Servant after lapse of a particular of time, <sup>period</sup> in holding that it was not a <sub>^</sub> condition of service. The purpose of Rule 205 is to make the deduction from the salary valid as otherwise such deduction would be invalid in view of the service privilege under Section 25 to receive salary without deduction. The purpose

of Rule 205 in not to make the payment of the insurance money a condition of service but only to make legal a deduction of premium for the insurance from the salary of the employee which would otherwise have been illegal in view of

Section 25 of the Army Act.

12. In this regard, Shri K D Nag, Sr. Standing Counsel gave an enlightening example. He submits that if a provision for compulsory deduction of the premium for motor accident insurance is made in the service Rules <sup>of army personnel</sup> a dispute as to whether insurance amount is payable to the insured in case of an accident would still have to be decided by the Motor accident claims Tribunal and not as a service matter by the Tribunal under the Armed Forces Tribunal Act.”

13. We shall now consider whether AGIF claim is a retirement benefit. The retiral benefits which are to be given to serviceman are dealt with in the Pension Regulations for the Army and cover such benefits as Family Pension, Special Family Pension, Disability pension, ex – gratia awards etc. These benefits are conditions of service and are covered under clause (i) in the definition <sup>of</sup> ~~off~~ service matters under section 3(o). The payment of AGIF dues is not covered under the Pension Regulations for the Army 1961. That however does not mean that a condition of service cannot be created by

an Army Order. Sita Ram Jivvabhai Gavali Vs. Ramjibhai Potiyabhai Mahala and Others 1987 (2) SCC 262 has been relied upon for the proposition that conditions of service can be created by executive order. We shall therefore consider whether AGIF dues are retirement benefits covered under clause (i) of Section 3(o). It has been held by the Supreme Court in Deokinandan Vs State of Bihar AIR 1971 SC 1409 that the claim for pension is not a bounty but is a right on account of past service rendered by the employee. The consideration for the right to any other post retiral benefits would also in our view be the past services rendered by the employee. The consideration for payment of AGIF dues is not the past service rendered by the employee but the premium paid by him. It is a different matter that the insurance benefit under AGIF is meant to cover the risk of a service contingency namely a disability which a serviceman may have incurred during service or that such premium for the insurance is compulsorily deductible. The relationship between the Board of the society and the member of the AGIF is not that of employer and employee. It is therefore AGIF dues as a retirement benefit related to conditions of service. We are therefore of the view that AGIF dues are not

covered under the category of retirement benefits in clause (i) of Section 3 (o).

14. It is submitted that the legislature intended to bring all disputes relating to army personnel within the jurisdiction of the Tribunal and therefore the expression "service matters" should be given the widest interpretation. The preamble of the AFT Act reads as follows :

*"An Act to provide for the adjudication or trial by Armed Forces Tribunal of disputes and complaints with respect to commission, appointments enrolment and conditions of service in respect of persons subject to the Army Act 1950, the Navy Act 1957 and the Air Force Act 1950 and also to provide for appeals arising out of orders, findings or sentences of courts martial held under the said Acts and for matters connected therewith or incidental thereto."*

The preamble itself refers to certain specific disputes and also those relating to conditions of service.

15. From a reading of the definition of Service matter under section 3(o) together with the preamble it appears that certain disputes which could fall under the definition of service matter have been specifically excluded such as Transfer, posting, leave etc. In Surendra Bahadur Singh V Armed Forces Tribunal Mil LJ 2012 (All) 49. a Division Bench of the Allahabad High Court has held that a Writ



Petition is maintainable in matters in which the jurisdiction of the Tribunal has been excluded by section 3(o). To say that all service matters of persons subject to the Army Act are therefore covered under the jurisdiction of the Tribunal would not be correct. In Sagatika Singh Vs. Union of India 2012 LIC 333 the Delhi High Court was dealing with a writ petition against an order of the Principal Bench of the Tribunal holding that AGIF dues are not covered under the definition of service matters. It <sup>was JS</sup> held that the AGIF is 'state' within the meaning of Art 12 and a Writ Petition is maintainable against it. An AGIF claim is not a part of the package of retiral benefits paid by the Army. The disability benefit paid by the AGIF is distinct from the disability pension paid under the Pension Regulations for the Army and its determination is based on a different criteria. A rejection of an AGIF claim on the ground that it is not payable under the prescribed criteria may therefore constitute a separate cause of action from a rejection of a claim for disability pension and a separate claim may have therefore to be filed for it and the object of getting all the retiral claims of the serviceman to be decided in a single petition may therefore in any case not be achieved. We therefore do not find anything in the scheme of the Armed Forces Tribunal Act to hold that the expression

“retirement benefits” should be given a meaning delinked to  
condition<sup>s</sup> of service..

16. For the reasons given above, we are of the view that a  
claim of AGIF is not covered under the definition of service  
matter<sup>s</sup>. In the circumstances, the Transferred Applications are  
not maintainable in the Tribunal. Let the record of these cases  
be sent back to the High Court.

(Lt. Gen. P/R Gangadharan)  
Member (A)

(Justice Janardan Sahai)  
Member (J)

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