

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

M.A. No. 2357 of 2017

Along with

M.A. No. 2332 of 2017

and

M.A. No. 999 of 2018

In re:

Transferred Application No. 402 of 2010

Thursday, this the 25th day of October, 2018

Hon'ble Mr. Justice SVS Rathore, Member (J)

Hon'ble Air Marshal BBP Sinha, Member (A)

Smt. Vidyawati (deceased) through Smt. Sheela & ors, residents of 167-A, Sadar Bazar. Police Station Cantt. District Allahabad (U.P)

Counsel for the Applicants : Shri KKS Bisht, Advocate.

Vs.

1. Union of India, through Secretary, Department of Defence, New Delhi.
2. The Director General, Border Road, Kashmiri Gate, Seema Sadan Bhawan, New Delhi Cantt.
3. Commandant Chief Engineer (P), Pushpak Pariyojna, Headquarters, C/o 99 APO.

Respondents

Counsel for respondents : Dr Shailendra Sharma Atal,
Senior Government Counsel.

ORDER (ORAL)

1. This matter came up before us for hearing on M.A. No. 2357 of 2017 (Application for condonation of delay), M.A. No. 2332 of 2017 (Application for substitution of legal heirs), and M.A. No. 999 of 2018 (Application for setting aside abatement) moved by the Applicants in T.A .No. 402 of 2010.

2. Initially Writ Petition No. 32277 of 2004 was filed by Smt. Vidyawati (since deceased) widow of deceased soldier before Hon'ble High Court of Judicature at Allahabad wherein the following prayer was made:

- “(a) *To issue a writ, order or direction in the nature of mandamus commanding the respondents to consider the representations moved by the petitioner regarding payment of retiral benefits and release the same expeditiously within a period to be specified by this Hon'ble Court.*
- (b) *to issue any other writ, order or direction as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.*
- (c) *cost may be awarded in favour of the petitioner.”*

3. It transpires from the perusal of the record that vide order dated 17.08.2004, Hon'ble the High Court had passed the following order:

“Heard counsel for the parties and perused the record.

In brevity the facts of the case are that the husband of the petitioner expired on 1.11.1976. He was working as cook in the respondent establishment.

By means of this petition, the petitioner has sought for a writ in the nature of mandamus for commanding the respondents to consider the representations moved by petitioner regarding payment of retiral benefits.

From the record appended to the writ petition it appears that the petitioner has not been paid arrears of retiral benefits.

An ad interim mandamus is issued to the respondents pay the arrears of retiral benefits within a period of six weeks from today or to show cause by filing an affidavit within two months.

List after two months”

4. Thereafter the respondents filed a counter affidavit wherein they pleaded that the husband of the Writ Petitioner was a member of General Reserve Engineer Force (GREF) and he was not entitled to pensionary benefits as he was not having minimum qualifying service of ten years to his credit.

5. Subsequently, by order dated 29.03.2010 passed by Hon'ble High Court, the Writ Petition was transferred to this Tribunal and was

renumbered as T.A. No. 402 of 2010 and notice was issued to the Writ Petitioner. Since none appeared on her behalf, as such, this Tribunal vide its order dated 09.07.2010 had dismissed the T.A. on the ground that it has been abated.

6. It has been submitted by learned counsel for the respondents that the deceased soldier was member of GREF and in matters of members of GREF, this Tribunal lacks jurisdiction to try such matters in view of decision of Hon'ble Apex Court. It is admitted on behalf of the applicants that that the deceased husband of initial Writ Petitioner was member of GREF. In reply to the argument on the point of maintainability, learned counsel for the applicants has submitted that the matter may be remitted back to Hon'ble High Court.

7. The legal position that has to be considered is as to whether all service matters of members of GREF are triable by this Tribunal or not.

8. This Tribunal in O.A. No. 104 of 2011, *Lieutenant Colonel Vijaynath Jha* vs. *Union of India and ors*, (2018) 7 SCC 303, has held that service matters relating to members of GREF are not maintainable before the Armed Forces Tribunal. Said judgment of this Tribunal has been confirmed by Hon'ble the Apex Court in the case of *Lieutenant Colonel Vijaynath Jha* vs. *Union of India and ors*, Civil Appeal No. 2020 of 2013 decided on 18.05.2018 wherein relying upon its earlier judgment in the case of *Union of India and ors* vs. *J.A. Grewal*, 2014 (7) SCC 303, it has been held as under:

“26. The judgment of this Court in *Union of India & Ors. Vs. Colonel G.S. Grewal*, (supra) was extensively quoted by this Court and after quoting Paragraph 26 of the judgment, following was stated in Para 29:-

“29. Thus, the Court in *G.S. Grewal* case clearly held that merely because the respondent is subjected to the 1950 Act would not by itself be sufficient to conclude that the Tribunal had jurisdiction to deal with any case brought before it by such a person. It would depend upon the subject-matter which is brought before the Tribunal and the Tribunal is also required to determine as to whether such a subject-matter falls within the definition of “service matter” as contained in Section 3(o) of the 2007 Act.

27. This Court further laid down in Paragraphs 33 and 34: *Mohd Ansari* case (2017) 3 SCC 740.

“33. The situation insofar as jurisdiction of the Armed Forces Tribunal (AFT) to hear the appeals arising out of court martial verdicts qua GREF personnel, however, appears to stand on a different footing. It is jurisdiction of the Armed Forces Tribunal (AFT) to hear the appeals arising out of court martial verdicts qua GREF personnel, however, appears to stand on a different footing. It is because the provisions of Chapter VI i.e. offences, Chapter VII i.e. punishment, Chapter X i.e. “courts martial”, etc. apply with full force, subject to minor exceptions and modifications here and there, as applied to GREF. Therefore, the provisions of the 1950 Act dealing with various punishments inflicted by way of courts martial qua GREF personnel as applied can be agitated before AFT and AFT shall have jurisdiction to hear appeals arising out of courts martial verdicts. There can be no doubt that in respect of said matters AFT shall have jurisdiction. Denial of jurisdiction to the said Tribunal would be contrary to the 1950 Act and the provisions engrafted under the 2007 Act. To elaborate, right to approach AFT by the personnel of GREF who are tried by a court martial held under the very same Act has to be recognised. At the same time, if the punishment is imposed on GREF personnel by way of departmental proceedings held under the CCS (CCA) Rules, 1965 then obviously the same cannot be agitated before AFT since the penalty in such cases will not be one under the 1950 Act but will be under the CCS (CCA) Rules, 1965. The distinction, as the law exists in the present, has to be done.

34. From the aforesaid, the legal position that emerges is that AFT shall have jurisdiction (i) to hear appeals arising out of courts martial verdicts qua GREF personnel. To this extent alone AFT shall have jurisdiction. At the same time, if the punishment is imposed on GREF personnel by way of departmental proceedings held under the CCS (CCA) Rules, 1965 the same cannot be agitated before AFT; and (ii) AFT shall have no jurisdiction to hear and decide grievances of GREF personnel relating to their

terms and conditions of service or alternatively put "service matters".

9. After discussing the issue which is involved in the present case also, Hon'ble the Apex Court held that the Armed Forces Tribunal has jurisdiction to entertain appeals arising out of court martial and in no other matter relating to GREF personnel, the Hon'ble Apex Court in the case of ***Lieutenant Colonel Vijaynath Jha*** (supra) in para-28 has further held as under:-

28. This Court in the above case has clearly held that AFT can exercise jurisdiction if the action, which is complained of flows from the Army Act, 1950, the example of court martial verdict was given to which the personnel of GREF were subject. This Court further held that in the event, the personnel of GREF had been administratively dealt with in the departmental proceedings held under the CCS (CCA) Rules, the same cannot be agitated before the AFT."

10. Since the present case is not an Appeal against Court Martial, therefore, in view of the pronouncement of Hon'ble the Apex Court in the case of ***Lieutenant Colonel Vijaynath Jha*** (supra) holding that the Armed Forces Tribunal has no jurisdiction to entertain such matters of GREF personnel, as such, this Tribunal lacks jurisdiction to entertain the present T.A. and consequently has no jurisdiction to decide other applications moved in the T.A.

11. The Registry is directed to send back the file of this case to Hon'ble High Court of Judicature at Allahabad.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)
 Dated: 25.10.2018
 anb

(Justice SVS Rathore)
Member (J)