

Court No. - 2

Case :- WRIT - A No. - 25375 of 2021

Petitioner :- No.1260351 Ex Nk Chhun Bahadur

Respondent :- Armed Forces Tribunal Regional Bench
Thru.Registrar And Ors.

Counsel for Petitioner :- Ved Prakash Pandey,Kamal
Kumar Singh

Counsel for Respondent :- A.S.G.,Mahendra Kumar Misra

Hon'ble Rajan Roy,J.

Hon'ble Jaspreet Singh,J.

1. Heard Shri Ved Prakash Pandey along with Shri Kamal Kumar Singh, learned counsel for petitioner and Shri S.B. Pandey, learned Senior Counsel and Deputy Solicitor General of India assisted by Shri Mahendra Kumar Misra, learned counsel for the opposite parties.

2. By means of this writ petition the petitioner challenged the judgment and order dated 18.01.2021 passed by Armed Forces Tribunal, Regional Bench, Lucknow in Original Application No. 696 of 2017 as also the order dated 03.06.2021 passed in Review Application No. 08 of 2021.

3. The facts of the case in brief are that the petitioner was engaged in the Indian Army in two phases, firstly, as 'Hawaldar' for the period from 1973 till his retirement/ discharge in 1983. Thereafter, he was engaged in the Defence Security Corps in 1989 and continued to serve in Indian Army till 2004 when he was retired/discharge. The petitioner herein was receiving service pension in respect of his first period of service ending in 1983, however, when he was not given the benefit of second service pension and in fact the same was declined by various orders passed by the opposite parties, he filed Original Application bearing No. 259 of 2013 which came to be allowed on 13.09.2017 and the orders impugned therein dated 28.03.2012, 28.02.2013 and 27.02.2013 were quashed. A direction was issued for payment of pension to the applicant with all consequential benefits. The said judgment was complied. However, as the

petitioner claimed entitlement to disability pension in addition to the service pension already being received by him, as, he has been medically assessed regarding such disability while he was in service for the second tenure, he filed Original Application No. 696 of 2017. The said Original Application has been dismissed on the ground that this relief of service of disability pension should have been claimed in the earlier Original Application bearing No. 259 of 2013 and as, this has not been done, therefore, based on the principles contained in Order II Rule 2 of Civil Procedure Code, 1908 this subsequent original application was barred. The Tribunal was of the opinion that applicant should have included whole of the claim i.e. second service pension and disability pension to which the applicant was entitled in respect of the same cause of action i.e. discharge from DSC service in Original Application No. 259 of 2013 or ought to have sought the leave of the Tribunal to file a fresh Original Application, which, he did not do and as this has not been done, therefore, Original Application is liable to be dismissed and accordingly, it has dismissed it.

4. The contention of petitioner's counsel is that the reasoning given by the Tribunal in the judgment dated 18.01.2021 is apparently erroneous, as, it has ignored to consider Rule 10 of the Armed Forces Tribunal (Procedure) Rules, 2008 (hereinafter referred to as 'the Rules, 2008'), according to which, an application shall be based upon a single cause of action and may seek one or more relief, provided that they are consequential to one and another. The submission is that relief for disability pension was not consequential to the main relief of service pension, as, the two pensions are admissible separately under different regulations even though based on same cause, therefore, in the Original Application 259 of 2013 both the reliefs as referred by the Tribunal in the impugned judgement could not have been claimed, as, the Original Application would have been hit by Rule 10 of the Rules, 2008. He submits that the Tribunal was apprised of this error apparent on the face of the record by filing a Review Application bearing No. 8 of 2021 in Original Application No. 696 of 2017, but, the

same has also been dismissed on 03.06.2021 on the ground that the said ground does not constitute an error apparent on the face of the record. He submits that this reasoning is also incorrect both on facts and in law.

5. On being confronted Shri S.B. Pandey, learned Senior Counsel and Deputy Solicitor General of India appearing for the opposite parties contends that prayer for relief of disability pension was consequential to relief of service pension, however, we do not accept it, as, this contention is absolutely erroneous. No doubt, both the reliefs were based on the same cause of action, but, they were not consequential to each other. The term 'consequential' means something flowing from the main relief and as a consequence thereof. The disability pension arose from the discharge/retirement of the petitioner and not from the grant of service pension. There is no connection between the grant of service pension and disability pension. The same are admissible separately, although, simultaneously.

6. On being confronted with relevant regulations in this regard Shri S.B. Pandey, learned Senior Counsel and Deputy Solicitor General of India appearing for the opposite parties fairly submitted that both service pension and disability pension can be admissible in given facts and circumstances of the case and it is not as if service pension has been paid, then, disability pension is not payable. We may in this regard refer to the Pension Regulations for the Army, para 5(1) of which refers to retiring pension/service pension and para 5(6) refers to disability pension/war injury pension.

7. Having heard learned counsel for the parties and having perused the records, we are of the opinion that in view of the Rule 10 of the Rules, 2008 in the facts of this case disability pension could not have been claimed by the petitioner in Original Application No. 259 of 2013, as, it is not a relief consequential to the relief of service pension. It being so, neither the provision nor the principles contained in Order II Rule 2 CPC were applicable. The Tribunal has therefore clearly erred in the

matter, especially as, there was no requirement for the petitioner to seek liberty in the first Original Application for filing a separate Original Application to claim disability pension and none could be pointed out by the learned counsel for the opposite parties. However, we find that Annexure No. 3 is the document wherein the date of discharge is mentioned as 30.06.2004. We asked learned counsel for the parties as to whether the delay in filing of the Original Application was condoned in terms of Section 22(2) of the Armed Forces Tribunal Act, 2007 learned counsel for the petitioner submitted that it had been condoned, however, learned counsel for the opposite parties says that there is no such recital in the impugned judgment nor the Original Application.

8. Be that as it may, it has not been mentioned by the Tribunal in the impugned judgment whether the delay was condoned or not, therefore, this is not an issue to be seen by us, it can be seen by the Tribunal, as, apparently the reasoning given by the Tribunal in the impugned judgment is not sustained. We accordingly, set-aside the judgment dated 18.01.2021 as also order dated 03.06.2021. The Original Application No. 696 of 2017 shall now stand restored. The Tribunal shall proceed to consider and decide the Original Application as per law at the earliest, say, within a period of six months.

9. If the delay has not been condoned, then, the Tribunal shall also consider the question of limitation in terms of Section 22 of the Armed Forces Tribunal Act, 2007. If it has been condoned, then, of course the said issue shall not be opened but the Tribunal shall consider the merits of the matter keeping in the mind the observations made hereinabove.

10. The writ petition is **allowed** in the aforesaid terms.

(Jaspreet Singh,J.) (Rajan Roy,J.)

Order Date :- 23.8.2024/R.K.P.