

**HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.6958 of 2012 (O&M)

Date of Decision: 18.05.2015

No.675477 Ex LAC Anil Kumar Bishnoi

... Petitioner

VS.

Union of India & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE P.B. BAJANTHRI

Present: Mr. RK Malik, Senior Advocate with Messrs Vijay Dahiya, Bhim Sen Sehgal, Navdeep Singh, Rajesh K Kataria, Narinder Sharma, Ravinder Malik, Manish Prabhakar, VD Sharma, Aman Chaudhary, Rajeev Anand, KS Dadwal, Rajeev K Kapila, SK Rattan, Akshay Kaushal, RS Panghal, GS Dhaliwal, Rakesh Bakhsi, Anil Ghanghas, Ashok Bhardwaj, Vikas Lochab, Siddhant Kant, RS Manhas, Tribhuvan Dahiya, NK Kohli, Arun Bansal, Akshay Kumar Goel, RA Sheoran, GS Ghuman, RN Ojha, GS Chahal, Gaurav Bakshi, Naresh Ghai, Sharda Chaudhary, Rajneesh Gupta, Arvind Mudgil, Ravi Badyal, Ashok Bhardwaj, Pankaj Bali, Mrs. Balwinder Kaur, JS Saneta, Aman Priye Jain, Sonia Chauhan, SM Kundu, Rajan Bansal, Advocates for the petitioner(s) and Gopi Ram – petitioner in person

Mr. Dheeraj Jain, Sr.Asstt.Solicitor General, UOI and Messrs Puneet Gupta, Amit Sheoran, Vipul Aggarwal, MS Cheema, Piyush Khanna, Pawan Kumar Longia, Krishan Kumar, Balwinder Singh Jolly, Jatinder Kumar Sharma, Brijeshwar S. Kanwar, Ravi Kadian, Siddharth Jain, Rajender Singh Malik, Amit Jaiswal, Jitender Nara, Vikram Bajaj, Jagjot S. Lalli, Alok Kumar Jain, Abhinav Gupta, Arun Gosain, Amit Arora, Prateek Gupta, Suvir Sehgal, Ms. Sheenu Sura, Prateek Mahajan, Varun Issar, Vishal Garg, Karan Bhardwaj, Vivek Singla, Dr.Ashwinie Kumar Bansal, Devender Nirban, Vikrant Pamboo, Vishal Gupta, Advocates – Senior Panel Counsel/Central Government Counsel, Union of India

SURYA KANT, J. (Oral)

(1) This order shall dispose of a bunch of writ petitions i.e.

CWP Nos.19118 of 2011; 6958, 8795, 22986 of 2012; 5212, 6424,

8705, 8492, 9198, 9199, 10671, 8458, 11194, 12152, 14697, 16880,

19702, 20278, 26415 of 2013; 1133, 3542, 4874, 4953, 6136, 6444, 6855, 7576, 7726, 8286, 8504, 9059, 9211, 10291, 10986, 11355, 12462, 12990, 13039, 13080, 14540, 14653, 15089, 15361, 16404, 17047, 17200, 17303, 17312, 17595, 17775, 17863, 17867, 17885, 18186, 18215, 20265, 20523, 20624, 20632, 20898, 21382, 21388, 21391, 21725, 22046, 22047, 22968, 23617, 23919, 24036, 24521, 25176, 25767, 25930, 26791, 26999 of 2014; 689, 2151, 2599, 2603, 3145, 3148, 3588, 4060, 4065, 4208, 4228 of 2015; and CrWP No.94 of 2015 wherein the orders passed by the Armed Forces Tribunal, Regional Bench, Chandigarh (in short, 'the Tribunal') are under challenge. Though every case has its own set of facts, issues and the points raised or the nature of relief sought therein but having regard to the preliminary objection raised on behalf of the respondents against maintainability of these writ petitions, we proceed to dispose of these writ petitions by a common order.

(2) There is indeed no quarrel that in none of these cases, the petitioners have availed the statutory remedies under Section 30 or 31 of the Armed Forces Tribunal Act, 2007 (in short, 'the Act') before invoking the writ jurisdiction of this Court under Article 226 of the Constitution.

(3) The question of maintainability of writ petitions against the orders passed by the Tribunal without availing the alternative remedy inbuilt in the Statute is no longer *res integra* and has been settled by the Supreme Court in **Union of India & Ors. vs. Major**

General Shri Kant Sharma & Anr., 2015(2) SCT 519. Out of various conclusions drawn therein, suffice it is for us to reproduce Para-37 **“Likelihood of anomalous situation”** whereunder the Apex Court has ruled as follows:-

“If the High Court entertains a petition under Article 226 of the Constitution of India against order passed by Armed Forces Tribunal under Section 14 or Section 15 of the Act bypassing the machinery of statute i.e. Sections 30 and 31 of the Act, there is likelihood of anomalous situation for the aggrieved person in praying for relief from this Court. Section 30 provides for an appeal to this Court subject to leave granted under Section 31 of the Act. By clause (2) of Article 136 of the Constitution of India, the appellate jurisdiction of this Court under Article 136 has been excluded in relation to any judgment, determination, sentence or order passed or made by any court or Tribunal constituted by or under any law relating to the Armed Forces. If any person aggrieved by the order of the Tribunal, moves before the High Court under Article 226 and the High Court entertains the petition and passes a judgment or order, the person who may be aggrieved against both the orders passed by the Armed Forces Tribunal and the High Court, cannot challenge both the orders in one joint appeal. The aggrieved person may file leave to appeal under Article 136 of the Constitution against the judgment passed by the High Court but in view of the bar of jurisdiction by clause (2) of

Article 136, this Court cannot entertain appeal against the order of the Armed Forces Tribunal. Once, the High Court entertains a petition under Article 226 of the Constitution against the order of Armed Forces Tribunal and decides the matter, the person who thus approached the High Court, will also be precluded from filing an appeal under Section 30 with leave to appeal under Section 31 of the Act against the order of the Armed Forces Tribunal as he cannot challenge the order passed by the High Court under Article 226 of the Constitution under Section 30 read with Section 31 of the Act. Thereby, there is a chance of anomalous situation. Therefore, it is always desirable for the High Court to act in terms of the law laid down by this Court as referred to above, which is binding on the High Court under Article 141 of the Constitution of India, allowing the aggrieved person to avail the remedy under Section 30 read with Section 31 Armed Forces Act.

(emphasis applied)

(4) In Para 38 of the Report, it was noticed that some of the High Courts had entertained the writ petitions directly against the orders passed by the Tribunal whereas the other High Courts had declined. The view taken by the Delhi High Court in entertaining the writ petition has been expressly disapproved observing that “...we are of the view that the Delhi High Court was not justified in entertaining the petition under Article 226 of the Constitution...”.

(emphasis applied)

(5) Faced with this the learned counsel for the petitioners cite

(i) **L. Chandra Kumar vs. Union of India, (1997) 3 SCC 261**; (ii) **Madras Bar Association vs. Union of India & Anr., (2014) 10 SCC 1**; (iii) **Union of India & Anr. vs. Ex Naik Surendra Pandey (Civil Appeal No.2433 of 2011)** decided on 18.09.2014; (iv) **Columbia Sportswear Company vs. Director of Income Tax, Bangalore, [SLP(C) No.31543 of 2011]** decided on 30.07.2012 (v) **Council of Scientific and Industrial Research & Anr. vs. KGS Bhatt & Anr. (1989) 4 SCC 635**; (vi) **Union of India & Ors. vs. Brigadier PS Gill (2012) 4 SCC 463**.

(6) The Constitution Bench in **L.Chandra Kumar's** case ruled that the power of judicial review over legislative action vested in the High Courts under Article 226 and in the Hon'ble Supreme Court under Article 32 of the Constitution, is an integral and essential feature of the Constitution and is, thus, a part of its basic structure. Section 25 of the Administrative Tribunals Act, 1985 to the extent it excluded the jurisdiction of the High Courts, was thus declared unconstitutional.

(7) In **Madras Bar Association's** case, the legislative attempt to constitute the National Tax Tribunal (comprising Technical/non-Judicial Members) as a replacement of High Court to deal with substantial question of law relating to tax matters, was struck down laying down it to be a clear case of delusion and encroachment upon 'independence of judiciary' and 'rule of law'.

(8) In **Ex. Naik Surendra Pandey**, the Hon'ble Supreme Court has held that appeal under Section 31 of the Armed Forces Tribunal Act, 2007 is maintainable only in case the same involves substantial question of law of general/public importance and having found a reasonable nexus and casual connection between the 'disability' and the 'military service' of the respondent at the relevant time, the order passed by the Tribunal granting disability pension to him was upheld.

(9) In **Columbia Sportswear Company's** case, the Apex Court considered the question whether the petition under Article 136 of the Constitution be entertained or the petitioner be asked to approach the High Court under Article 226/227 of the Constitution. It was ruled that if no substantial question of general importance arises for consideration or if a similar question is already pending before the Supreme Court, petitioner ought to be relegated to the High Court instead of entertaining the Special Leave Petition.

(10) The decision in **KGS Bhatt & Anr.** also elaborates the scope of exercise of appellate power under Article 136 of the Constitution by Hon'ble Supreme Court.

(11) In **Brigadier PS Gill**, the precise question that arose for consideration before the Hon'ble Supreme Court was "*whether an aggrieved party can file an appeal against any such final decision or order of the Tribunal under Section 30 of the Act aforementioned*

before this Court without taking resort to the procedure prescribed under Section 31 thereof.

(12) The aforesaid question was answered by the Apex Court holding as follows:-

“11. There is in the light of the above decisions no gainsaying that Section 30 of the Act is by reason of the use of the words "subject to the provisions of Section 31" made subordinate to the provisions of Section 31. The question whether an appeal would lie and if so in what circumstances cannot, therefore, be answered without looking into Section 31 and giving it primacy over the provisions of Section 30. That is precisely the object which the expression "subject to the provisions of Section 31" appearing in Section 30(1) intends to achieve. We have, therefore, no hesitation in rejecting the submission of Mr. Tankha that the expression "subject to the provisions of Section 31" are either ornamental or inconsequential nor do we have any hesitation in holding that right of appeal under Section 30 can be exercised only in the manner and to the extent it is provided for in Section 31 to which the said right is made subject.”

(13) From the brief resume of the decisions cited on behalf of the petitioners, it appears to us that the question of maintainability of the writ petition before High Court under Article 226/227 of the Constitution against an order passed by the Armed Forces Tribunal without exhausting the remedy of appeal under Section 30 read with Section 31 of the Act was neither raised nor answered in these cases.

(14) In the later decision in **Major General Shri Kant Sharma**, the Supreme Court after analyzing the legislative scheme of 2007 Act and keeping in view the statutory remedies provided therein, has narrowed down (if not completely barred) the scope of entertaining a writ petition under Article 226 against the Tribunal's order. Since the cited decision has, on interpretation of the provisions of a special Statute, held that the most appropriate recourse against the orders passed by AFT is to avail the remedy of appeal under Section 30 read with Section 31 of the Act, we are of the considered view that these writ petitions under Article 226/227 of the Constitution cannot be entertained and the petitioners ought to avail the remedies as available to them in terms of the binding decision in **Major General Shri Kant Sharma's** case.

(15) In all fairness, it is also stated by learned counsel for the petitioners that some review applications are pending before Hon'ble Supreme Court and this Court may await the outcome thereof. The mere filing/pendency of such application(s) would, however, is not a just or valid ground for us to hold back these cases.

(16) Consequently and for the reasons afore-stated, we dismiss these writ petitions being not maintainable and relegate the petitioners to their respective alternative remedies as are available in law. As of now, following the *dictum* in **Major General Shri Kant Sharma's** case, the writ petitions cannot be entertained.

Since the petitioners have been *bona-fidely* pursuing these writ

petitions before this Court, liberty is granted to them seek condonation of delay in filing of appeal etc., for the period spent in the pendency of these cases.

(17) The writ petitions stand disposed of in above terms.

(Surya Kant)
Judge

18.05.2015
vishal shonkar

(P.B. Bajanthri)
Judge