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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 26th May, 2017

+ W.P.(C) 7219/2016 & CM Nos. 29725/2016, 29726/2016

ASHIT KUMAR MISHRA Petitioner

Through: Dr. Vijendra Mahndiyan & Mr.
Puneet Kumar, Advocates

Versus

UNION OF INDIA & ORS Respondents

Through: Ms. Barkha Babbar with Ms.
Dipanjali Tyagi, Advocate

With

+ W.P.(C) 7221/2016 & CM Nos. 29729/2016, 29730/2016

SONU KUMAR DUBEY Petitioner

Through: Dr. Vijendra Mahndiyan & Mr.
Puneet Kumar, Advocates

Versus

UNION OF INDIA AND ORS Respondents

Through: Mr. Rahul Sharma with Mr.
CK Bhatt, Advocate for R-1to5

With

+ W.P.(C) 7246/2016 & CM Nos. 29792/2016, 29793/2016

MOHITOSH KUMAR SHARMA Petitioner

Through: Dr. Vijendra Mahndiyan & Mr.
Puneet Kumar, Advocates

Versus

UNION OF INDIA AND ORS Respondents
Through: Mr. Jasmeet Singh, CGSC

With

+ W.P.(C) 7248/2016 & CM Nos. 29797/2016, 29798/2016
SWAMI NATH PRASAD Petitioner
Through: Dr. Vijendra Mahndiyan & Mr.
Puneet Kumar, Advocates

Versus

UNION OF INDIA AND ORS Respondents
Through: Mr. Jasmeet Singh, CGSC
Mr. Rahul Sharma with Mr.
C K Bhatt, Advocates

With

+ W.P.(C) 7250/2016 & CM Nos. 29806/2016, 29807/2016
DINESH KUMAR SHARMA Petitioner
Through: Dr. Vijendra Mahndiyan & Mr.
Puneet Kumar, Advocates

Versus

UNION OF INDIA AND ORS Respondents
Through: Mr. Jasmeet Singh, CGSC

With

+ W.P.(C) 7251/2016 & CM Nos. 29851/2016, 29852/2016
SUBHASH CHANDRA TIWARI Petitioner
Through: Dr. Vijendra Mahndiyan & Mr.
Puneet Kumar, Advocates

Versus

UNION OF INDIA AND ORS Respondents
Through: Mr. Jasmeet Singh, CGSC
Mr. Rahul Sharma with Mr.
C K Bhatt, Advocates

With

+ W.P.(C) 7281/2016 & CM Nos. 29957/2016, 29958/2016
OM PRAKASH YADAV Petitioner
Through: Dr. Vijendra Mahndiyan & Mr.
Puneet Kumar, Advocates

versus

UNION OF INDIA AND ORS Respondents
Through: Mr. Jasmeet Singh, CGSC
Mr. Rahul Sharma & Mr. C K
Bhat, Advocates

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE PRATHIBA M. SINGH

JUDGMENT (ORAL)

SANJIV KHANNA, J. (ORAL)

1. Having heard counsel for the parties, we are inclined to accept the preliminary objections raised by the respondents.
2. The petitioners are ex-employees of the Indian Air Force who are now working in public sector or state government enterprises. They had resigned from the Indian Air Force before joining the public sector or state government enterprises. They seek

pro rata pension for the years of service rendered by them in the Indian Air Force.

3. The prayer made in the present writ petitions is for setting aside and quashing letters written by the Air-Officer Commanding, Air Force Records Office (AFRO) denying them benefit of pro rata pension.

4. The preliminary objection raised by the respondents is that the dispute and issues raised by the petitioners is a 'service matter' as defined in Section 3 (o) of the Armed Forces Tribunal Act, 2007 (Act). The petitioners have an alternative remedy as per the Act and should move the Armed Forces Tribunal (Tribunal) for relief.

5. The Act, i.e. Armed Force Tribunal Act, notified with effect from 15.06.2008, is an Act which provides for adjudication of disputes and complaints in respect to commission, appointment, enrolment and conditions of service in respect of persons subject to Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950.

6. Section 2 of the Act reads as under:-

“Applicability of the Act – the provisions of this Act shall apply to all 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).

(2) This Act shall also apply to retired personnel subject to the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950), including

their dependants, heirs and successors, in so far as it relates to their service matters.”

The aforesaid section states that the provisions of the Act shall apply to all persons governed by the aforesaid three Acts. Sub-Section 2 clarifies and explicates that the Act would also apply to the retired persons, subject to the Army Act, Navy Act or Air Force Act. This would include dependants, heirs and successors in so far as it relates to their service matters.

7. The expression ‘service matter’ is defined in clause (o) to section 3 of the Act, reads:-

“(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 allowance), 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*

But shall not include matters relating to –

- (i) *Orders issued under section 18 of the Army Act, 1950 (46 of 1950), sub-section (1) of section 15 of the Navy Act, 1957 (62 of 1957) and section 18 of the Air Force Act, 1950 (45 of 1950) ; and*
- (ii) *Transfer and postings including the change of place or until on posting whether individually or as a part of unit, formation or ship in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 and the Air Force Act, 1950 (45 of 1950).*
- (iii) *Leave of any kind;*
- (iv) *Summary Court Martial except where the punishment is of dismissal or imprisonment for more than three months.”*

8. As per Section 3(o), service matters include all matters relating to conditions of services, including pension and other retiral benefits. Clause (ii) stipulates that tenure, commission, appointment, pre-mature retirement, superannuation, termination of service etc. are also covered under the expression ‘service matters’. It is not the case of the parties that any of the exceptions carved out in Clause (i) to (iv) of Section 3(o) of the Act are applicable to the present cases. We are, therefore, not advertent to and examining the said clauses.

9. Section 2 and Section 3(o) of the Act have to be read harmoniously. The intent behind sub-section 2 to Section 2 is to elucidate and clarify any doubt that disputes raised by retired employees, including contests and claims of legal heirs, successors

etc. in so far as they relate to service matters, would be covered by and fall within the jurisdiction of the Tribunal, i.e., Armed Forces Appellate Tribunal. We would not read the explanatory sub-section 2 to Section 2 as a restrictive and negative mandate which curtails the scope and ambit of Section 3(o) of the Act.

10. In the State of Punjab Vs. Kailash Nath, (1989) 1 SCC 321, the Supreme Court referring to the expression “conditions of service” observed that in the normal course preview of the said expression would classify and include tenure or termination of service, pension, compulsory or premature retirement. Without debate the expression “conditions of service” is comprehensive to include all matters pertaining to service conditions. B to b...

11. Noticeably, the expression "conditions of service" used in clause (o) to section 3 of the Act is explicated and exemplified in clauses (i) to (iv). Any faint doubt is foreclosed and answered by clause (ii) to Section 3(o) which in clear and categorical terms states that disputes and issues relating to premature retirement, superannuation and termination of service, would be service matters. Pension and retirement benefits and conditions applicable for entitlement or disentitlement would fall within the said expression. No doubt there are decisions which distinguish resignation and voluntary retirement, albeit in *Shahsikala Devi versus Central Bank of India & Ors.*, (2013) 16 SCC 260, it has been observed that the expression retirement could be read to mean termination of service by reason of any cause other than removal

by discharge due to misconduct. The word “resignation” may not be conclusive and in some cases, officers who have resigned would be entitled to terminal benefits. Thus, a contextual interpretation can be given to decide whether a particular case is one of resignation amounting to voluntary retirement. Pertinently, Section 3(o) of the Act uses the words “premature retirement” which is an expression that would favour a wider and broader approach to include and cover cases of resignation. The expressions “termination of service” and “premature retirement” as terms used in the clause are to be given meaning with the reference to the intent of the Legislation, the spirit and reason of law. The intent would mean and include termination by all modes and forms. Premature retirement would embrace retirement before the superannuation date. The legislative intent is to include disputes of the present nature within the four-corners of the expression "service dispute".

12. Learned counsel for the respondents is affirmative and states that the petitioners claim for pro rata pension is governed and covered by the Act and therefore the petitioners' must and should approach the Tribunal which is the first forum that should adjudicate and decide the prayer.

13. In *Union of India versus G.S. Grewal*, (2014) 7 SCC 303, it was observed that a person, by merely being subjected to the Army Act, would not be by itself be sufficient to conclude that the Tribunal has jurisdiction to deal with any case brought before it by

the said person. It would also depend upon the subject matter, which is brought before the Tribunal and the Tribunal is required to determine as to whether such subject matter falls within the definition of “service matters”. Recently, the Supreme Court in ***Mohd. Ansari versus Union of India and Others, (2017) 3 SCC 740***, while examining a dispute raised by a member of the General Reserve Engineering Force of the Border Roads Organisation, elucidated on the expression “service matters” as defined in Section 3(o) and held that appeals arising out of court martial verdict would have to be adjudicated by the Tribunal, i.e., Armed Forces Tribunal, but punishments imposed in departmental proceedings under the Central Civil Services Rules cannot be agitated before the said Tribunal.

In the present context, this is not a case of concurrent or separate jurisdictions. The petitioners herein are claiming pension under the Air Force Act, being ex-employees. The fact that they have raised this claim after they had tendered their resignation would not make any difference, as their prayer and claim for *pro rata* pension is under the provisions of the Air Force Act. The petitioners have not claimed pension from the new employer or claimed inclusion of past service in the Air Force to be counted by the new employer for the purpose of pension.

14. Learned counsel for the petitioners, though not disputing the said position, submits that this is a case relating to discrimination and violation of Article 14 of the Constitution. He relies upon

decision of the Delhi High Court in ***Annie Nagaraja & Ors. Vs. Union of India & Ors., reported in 2016 (2) SLR 525.*** In particular, our attention was drawn to paragraphs 9 and 11 of the said decision. The aforesaid paragraphs refer to the contention of the parties. We do not think that the ratio refers to and decides the issue raised. Exercise of extraordinary Writ jurisdiction is discretionary. When alternative efficacious remedy is available, the petitioner can be asked to approach the Tribunal. The exceptions carved to the general principle are not invoked and are not applicable.

15. The Supreme Court in the ***Union of India & Ors vs. Major General, Shri Kant Sharma & Anr., (2015) 6 SCC 773***, while dealing with Section 3 (o) of the Armed Forces Tribunal Act, 2007 as to the Forum where a challenge order passed by the Armed Forces Tribunal, would lie, and the extent of judicial review available to the High Court, held as under:-

“36. The aforesaid decisions rendered by this Court can be summarised as follows:

(i) The power of judicial review vested in the High Court under Article 226 is one of the basic essential features of the Constitution and any legislation including the Armed Forces Tribunal Act, 2007 cannot override or curtail jurisdiction of the High court under Article 226 of the Constitution of India.

(ii) The jurisdiction of the High Court under article 226 and this Court under Article 32

though cannot be circumscribed by the provisions of any enactment, they will certainly have due regard to the legislative intent evidenced by the provisions of the Acts and would exercise their jurisdiction consistent with the provisions of the Act.

(iii) When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

(iv) The High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance.”

In view of what we have held above, the present cases clearly fall within situations (iii) and (iv) enumerated by the Supreme Court.

16. Learned counsel for the respondents has referred to the order dated 13.11.2014 passed in **WP(C) No. 3652/2013 in Devi Prasad Senguptya Vs. Union of India**, in which it was observed as under:-

“In the counter-affidavit, the respondent has raised a preliminary objection that the present Writ Petition filed by the petitioner is not maintainable, as the grievance raised falls under Section 14 of the Armed Forces Tribunal Act, 2007 and the Armed Forces Tribunal is the court of first instance and competent to adjudicate upon the matter.

The learned counsel for the petitioner, on the other hand, submits that the case of the petitioner is covered by a judgment of the Supreme Court in Welfare Association of Absorbed Central Govt. Employees in Public Enterprises and Ors. v. Union of India and Anr. (1996) 2 SCC 187 and submits that this Court can entertain the present Writ Petition without relegating the petitioner to the Court of competent jurisdiction.

The petitioner was enrolled in the Indian Air Force (IAF) on 9th April, 1953 and was discharged from service on 31st August, 1966. The pension of Airmen is governed by the Pension Regulations for the Air Force, 1961 (Part-I). The relief sought by the petitioner in the instant petition is available to him under Section 14 of the Armed Forces Tribunal Act, 2007.

In the above circumstances, without touching upon the merits of the case, we are of the view that the petitioner, at the first instance, should approach the learned Armed Forces Tribunal (AFT) to seek his remedy and not straightway invoke the writ jurisdiction of this Court. To entertain such a petition by the writ Court will also set a wrong precedent. We are conscious of the fact that the present petition was filed by the petitioner in the year 2013 and therefore, we request the learned AFT to prioritise this case of the petitioner for early disposal. We are also mindful of the fact that the petitioner is above 80 years of age.

The petition stands disposed off accordingly. “

17. It is pointed out that the issue raised and the objections were identical to the issue raised in the present case.

18. The aforesaid discussion is only in the context of determining jurisdiction and would not be treated as an expression

of opinion on the question of the petitioners' entitlement of *pro rata* pension or otherwise.

19. In view of the aforesaid discussion, we refrain and would not entertain and examine the merits of the claim and prayers made in the present writ petitions. The petitioners have an alternative, equally efficacious remedy and should have invoked the jurisdiction of the Tribunal for examining and considering their grievance.

20. At this stage, learned counsel for the petitioners submits that the writ petitions may be transferred to the Tribunal. In view of the said statement, the writ petitions would stand transferred to the Armed Forces Tribunal, Principal Bench.

21. To cut short the delay, the parties are directed to appear before the Principal Bench of the Armed Forces Appellate Tribunal on 27.07.2017.

22. The writ petitions and pending applications will be treated as disposed of without any order as to costs.

SANJIV KHANNA, J

PRATHIBA M. SINGH, J

MAY 26, 2017/P /NS'