

...

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-19341-2016

Date of Decision : November 13, 2018

Jai Pal Petitioner.

Versus

Union of India and others. Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Rajeev Kawatra, Advocate
for the petitioner.

Mr. Vivek Chauhan, Advocate,
for the respondents.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of mandamus to direct the respondents to grant Special Family Pension and Ex-Gratia to the parents of deceased and to direct the respondents to grant employment to the younger son of the petitioner as the only bread earner of the family had expired while serving the Nation.

2. At the commencement of hearing, learned counsel representing the respondents while drawing attention of this Court to Section 3(o) of the Armed Forces Tribunal Act, 2007, contended that the matter in controversy involved in the present writ petition is required to be decided by the Armed Forces Tribunal (for short, "**the Tribunal**") and as

...

such, the petitioner, if so advised may approach the Tribunal. According to him, as per Section 33 of the Act, the jurisdiction of all the Courts relating to service matters of Armed Forces Personnel has been excluded and as per Section 34 of the Act, all pending matters are required to be transferred to the Tribunal. For facility of reference, Section 34 of the Act is extracted below:-

“34 Transfer of pending cases.

[\(1\)](#) Every suit, or other proceeding pending before any court including a High Court or other authority immediately before the date of establishment of the Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based, is such that it would have been within the jurisdiction of the Tribunal, if it had arisen after such establishment within the jurisdiction of such Tribunal, stand transferred on that date to such Tribunal.

[\(2\)](#) Where any suit, or other proceeding stands transferred from any court including a High Court or other authority to the Tribunal under sub-section (1),

[\(a\)](#) the court or other authority shall, as soon as may be, after such transfer, forward the records of such suit, or other proceeding to the Tribunal;

[\(b\)](#) the Tribunal may, on receipt of such records, proceed to deal with such suit, or other proceeding, so far as may be, in the same manner as in the case of an application made under sub-section (2) of section 14 from the stage which was reached before such transfer or from any earlier stage or de novo as the Tribunal may deem fit.

3. After hearing learned counsel for the parties and appraisal of record, this Court is of the considered view that the present writ petition pertains to grant of Special Family Pension and ex-gratia to the family of deceased ex-army personnel and grant of employment to the younger son

...

of the petitioner and thus, the matter needs to be transferred to Armed Forces Tribunal, Chandigarh Bench, Chandigarh. Identical view was taken by a Co-ordinate Bench of this Court in **Risal Singh Vs. Union of India and others, 2011 (3) SCT 31.**

4. In view of the nature of controversy, the present writ petition is disposed of with a direction to the Registry of this Court to send the entire record of present writ petition in original to the Armed Forces Tribunal, Chandigarh Bench, Chandigarh expeditiously, but not later than two weeks from today.

(SHEKHER DHAWAN)
JUDGE

November 13, 2018.
som

Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes