

11.09.2024
Piya
ct no. 30
sl no. 5

WPA 5542 of 2011

Riteswar Pal

Vs.

Union of India & Ors.

Mr. Santipada Pahari
Mr. Mrinal Kanti Biswas
..... **For the Petitioner**

Mr. Tarun Jyoti Tewari
Ms. Kausiki Bose
..... **For the Respondents**

1. The present **writ petition** has been filed in the year **2011**.
2. The Respondents have raised the point of jurisdiction of this Court (in its writ jurisdiction) stating that as per Section 14 of the Armed Forces Tribunal Act, 2007, the present case should have been filed before the said tribunal and at this stage, the present case should be transferred to the said tribunal as per Section 34 of the Act.
3. **Relevant part Section 14 of the Act is as follows:-**

“14. Jurisdiction, powers and authority in service matters.-(1) Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority,

exercisable immediately before that day by all Courts (except the Supreme Court or a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to all service matters.”

4. Section 34 goes as follows:-

“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.”

5. It is thus clear that:-

- (i) All suits and proceeding shall be transferred to the tribunal (Section 34 of the Act).
- (ii) **The tribunal as per Section 14 does not have the jurisdiction, powers and authority of the Supreme Court or a High Court exercising**

**jurisdiction under Article 226 and 227 of the
Constitution.**

(iii) The present case has been filed invoking the writ jurisdiction in a service matter.

6. As such this Court is well within its powers to entertain the present writ petition.
7. The writ petitioner has now preferred this petition relying upon the judgment of the Supreme Court in ***Union of India & Ors. vs Rajpal Singh, in Civil Appeal No. 6587 of 2008, decided on November 7, 2008*** and the Delhi High Court in its writ jurisdiction on 20.11.2008 in service matter ***Subedar (SKT) Puttan Lal and Ors. vs Union of India & Ors.***, disposing of several writs which were of the year 2007 and 2008.
8. It is submitted by the writ petitioner that his prayer for applying the directions of the Supreme Court and High Court to his case has been denied. He prays that he be given the benefits as granted by the Courts above, which if he is deprived of would lead to denial of his basic fundamental and other rights.
9. On hearing the parties, the writ petition is disposed with the direction that the respondent/authorities shall consider the case of the petitioner as per the guidelines laid down in ***Union of India & Ors. vs Rajpal Singh (Supra)*** and ***Subedar (SKT) Puttan Lal and Ors. vs Union of India & Ors. (Supra)***, on giving a hearing to

the petitioner/his counsel, and decide the same in accordance with law **within 60 days** from the date of this order.

- 10.** All connected applications, if any, stand disposed of.
- 11.** Interim order, if any, stands vacated.
- 12.** Urgent certified website copy of this order, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)