

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

(174)

**2024:PHHC:038757-DB
CWP-6491-2024
Date of Decision: 18.03.2024**

Union of India & others

--Petitioners

Versus

No.1084547-F, Ex. Naik Bijinder Singh & another

--Respondents

**CORAM:-HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA.
HON'BLE MS. JUSTICE SUDEEPTI SHARMA.**

Present:- Mr. Rohit Verma, Advocate for the petitioners.

SANJEEV PRAKASH SHARMA.J (Oral)

1. The relief claimed in the present petition filed under Article 226/227 of the Constitution of India is for issuance of a writ in the nature of Certiorari for setting aside the impugned order dated 09.10.2018 (Annexure P-1) of the Armed Forces Tribunal, Regional Bench, Chandigarh, whereby the Tribunal has allowed the Original Application No.3019 of 2018 and granted benefit of rounding off w.e.f. 01.11.2001 to respondent no.1 without restricting the arrears.

2. Learned counsel for the petitioners has not been able to satisfy this Court as to why no appeal was filed against the order in time whereas there is a limitation provided under the Armed Forces Tribunal Act for filing an appeal within 30 days of passing of the order. Although, Hon'ble the Supreme Court in its judgement in ***Union of India & others Vs. Parashotam Dass, 2023(3) SLR 1 : 2023 INSC 265*** has observed as under:-

“28. We can say with some experience of handling these matters in exercise of jurisdiction under Article 226, prior to the creation of the Armed Forces Tribunal, that there used to be a large number of pension matters. Persons who had served in the Armed Forces were left at bay at the stage of

pension. This jurisdiction is also vested with the Armed Forces Tribunal. It would be difficult to say that there would be a larger public interest involved in a pension matter, but then, for that concerned person, it is of great importance. To deny the High Court to correct any error which the Armed Forces Tribunal may fall into, even in exercising jurisdiction under Article 226, would be against the constitutional scheme. The first independent judicial scrutiny is only by the Armed Forces Tribunal. To say that in some matters, a judicial scrutiny would amount to a second appeal, would not be the correct way to look at it. What should be kept in mind is that in administrative jurisprudence, at least two independent judicial scrutinies should not be denied, in our view. A High Court Judge has immense experience. In any exercise of jurisdiction under Article 226, the High Courts are quite conscious of the scope and nature of jurisdiction, which in turn would depend on the nature of the matter.

29. We believe that there is no necessity to carve out certain cases from the scope of judicial review under Article 226 of the Constitution, as was suggested by the learned Additional Solicitor General. It was enunciated in the Constitution Bench judgment in S.N. Mukherjee (supra) case that even in respect of courts-martial, the High Court could grant appropriate relief in a certain scenario as envisaged therein, i.e., “if the said proceedings have resulted in denial of the fundamental rights guaranteed under Part III of the Constitution or if the said proceedings suffer from a jurisdictional error or any error of law apparent on the face of the record.”

3. We note that the Armed Forces Tribunal Act, 2007 provided for filing of an appeal in terms of Section 30 of the Act. The present petitioners could have filed an appeal in the Hon'ble Supreme Court as they have stated that in some other cases they have already filed appeals before the Hon'ble

Supreme Court i.e. Civil Appeal Diary No(s) 21811 of 2018 titled ***Union of***

India through its Secretary and others Vs. SGT Girish Kumar, which is pending for disposal. Thus, the proceedings initiated by the petitioners by filing the present writ petition are found to be without basis. In cases where the matters are already pending before the Hon'ble Supreme Court the filing of the present petition on the same issue in the High Court would be an abuse of the process of law and would not be maintainable.

4. From the facts of the present case, it is apparent that the present case is not where there has been any denial of fundamental rights guaranteed under Article 13 of the Constitution of India nor the proceedings initiated and decided by the Armed Forces Tribunal suffer from jurisdictional error or any error of law apparent on the face of it.

5. In view of the above, the present writ petition is dismissed.

6. All pending civil misc. applications, if any, also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

18.03.2024
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(SUDEEPTI SHARMA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No