



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

% Date of decision: February 28, 2024

+ W.P.(C) 2976/2024 & CM APPL. 12212/2024 and
CM APPL. 12213/2024

(60) EX. SPR GURWANT SINGH (RETIRED)

S. NO. 15346749N

..... Petitioner

Through: Mr. Arvind Kumar, Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Harish Vaidyanathan Shankar,
CGSC with Mr. Srish Kumar, Mr.
Alexander Mathai Paikaday and Mr.
Krishnan V., Mr. Pushkar Mehta and
Mr. Prakhar Sharma, Advs. for R1 to
R3 with Mr. Hardik Bedi, Govt.
Pleader with Major Partho Katyayan.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 12213/2024

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 2976/2024

1. This petition has been filed by the petitioner with the following prayers:

“That this petition is filed bonafide and in the interest of justice. It is, therefore, most respectfully prayed that your Lordships may graciously be pleased to consider the above and admit this application, call for the records of the case, issue a rule calling



upon the respondents to show cause as to why a Writ as prayed for in this petition should not be issued and upon such cause or causes shown by the respondents and on perusal of the records and after hearing the parties be pleased to: -

- i. By writ of mandamus or any other appropriate writ, order or direction, quash and set aside impugned order of denying the disability element of disability pension arising out of disability, by the respondent*
- ii. By writ of mandamus or any other appropriate writ, order or direction direct to respondent authority to pay disability element arising out of disability on account of the incurred disability during the service period.*
- iii. direct the respondent to pay accrued arrear of the unpaid disability element of the pension hitherto, with the interest @12% per annum.*
- iv. award cost of the instant case; and*
- v. Pass any other writ/writs or order/orders granting any other relief or reliefs as to this Hon 'ble Court deems fit and proper in the facts and circumstances of the case.*

And for this act of your kindness, the petitioner as m duty bound, shall ever. ”

2. It appears that the grievance of the petitioner is pursuant to the order passed by the Armed Forces Tribunal ('AFT', for short) dated September 13, 2023 which we reproduce as under:

“Considering, the fact that the appeal has been filed by the applicant only on 10.06.2023 and the requirement of waiting for six months as stipulated in Section 21 of the Armed Forces Tribunal Act is not elapsed, we dismiss the application with liberty to the applicant to file the



application after it is matured for hearing.”

3. Though submissions have been made on Section 21(2)(b) Armed Force Tribunal Act, 2007, we would like to add further that before the expiry of six months, no remedy under the Army Act, 1950, Navy Act, 1957 and Air Force Act, 1950, is available to the aggrieved person to approach the AFT. We find the AFT in the impugned order has observed that the OA filed by the petitioner is premature.

4. Mr. Harish Vaidyanathan Shankar, learned CGSC appearing for the respondents concurs with the conclusion drawn by the AFT. According to him, after the communication dated June 10, 2023, the petitioner has submitted an appeal on July 15, 2023, which was decided on November 2, 2023, a copy of which has been handed over to the counsel for the petitioner. He states that, it is this order which gives cause of action to the petitioner to approach the AFT. He also states, even against the order dated November 2, 2023, the petitioner has a remedy of a second appeal.

5. In any case, we are of the view that since the representation / appeal dated July 15, 2023 has already been decided, the petitioner is within his right to approach the AFT, in accordance with law.

6. The petition stands disposed of.

CM APPL. 12212/2024

Dismissed as infructuous.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

FEBRUARY 28, 2024/jg