



2024:DHC:9430-DB



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

Reserved on: 06.11.2024

Pronounced on: 06.12.2024

+ W.P.(C) 14446/2024

MAJ. (RETD.) DR. RAJESH KUMAR BHARDWAJ

.....Petitioner

Through: Mr.Aayush Agarwal &
Mr.Nilesh Kumar, Advs.

versus

UNION OF INDIA THROUGH ITS SECRETARY

MINISTRY OF DEFENCE & ORS.Respondents

Through: Mr. Neeraj, SPC with
Mr.Vedansh Anand (GP),
Mr.Sachin Saraswat &
Ms.Soumyadip Chakraborty,
Advs.
Major Anish Muralidhar.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

NAVIN CHAWLA, J.

1. This petition has been filed by the petitioner challenging the Order dated 18.05.2022 passed by the learned Armed Forces Tribunal (hereinafter referred to as 'AFT'), Principal Bench, New Delhi in a Review Application, being RA No.21/2016 in OA No.556/2014, moved by the petitioner.

2. The petitioner challenges the said Order on the ground that it has unjustifiably deferred the adjudication of his review



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application *sine die* observing that it would await the outcome of the appeal pending adjudication before the Supreme Court in Civil Appeal Diary No. 21811/2018, titled ***Ex Sgt. Girish Kumar v. Union of India & Ors.***

Case of the Petitioner

3. The case of the petitioner is that the petitioner was commissioned in the Indian Army on 27.12.1982, and served with commendable dedication until 07.01.1997, when the petitioner sought premature retirement, which was duly granted. His career in service encompassed challenging assignments, including service in Siachen and Jaffna, Sri Lanka, both known for their hazardous and demanding conditions.

4. During his service, the petitioner sustained significant injuries, namely a “*tear anterior cruciate ligament*” and “*medical meniscus (left)*”, which resulted in him being placed in a low medical category while on duty. A Court of Inquiry unequivocally found these injuries attributable to military service. Following his retirement, a Release Medical Board assessed the petitioner’s disability at 60%, later broad-banded to 75%. The claim of the petitioner for grant of disability pension was, however, rejected on 20.10.1997.

5. The petitioner challenged the above decision by way of a Writ Petition, being W.P.(C) No. 22524/2005. The same was later transferred to the learned AFT and the learned AFT



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directed the petitioner to make a necessary representation to the respondents for the grant of the same.

6. Later, only the disability element of his pension was granted to the petitioner by the Army, while the service element of pension was denied. Aggrieved by the same, the petitioner filed another Original Application before the learned AFT, being OA No.556/2014, to claim the service element of his disability pension. The same was, however, dismissed by the learned AFT on 01.03.2016 on the ground that the service element of disability pension is not available to Army Personnel who sought voluntary retirement from service.

7. The petitioner then filed a review application, being RA No.21/2016, which has been pending for more than six years, and by its impugned order dated 18.05.2022, adjourned *sine die* to await the outcome of the judgment of the Supreme Court in ***Ex Sgt. Girish Kumar v. Union of India & Ors.*** in Civil Appeal No.21811/2018.

Submissions of the Learned Counsel of the Petitioner:

8. The learned counsel for the petitioner submits that the learned AFT has erred in adjourning the Review Application *sine die* only on the ground that a similar matter is pending adjudication before the Supreme Court. He submits that this amounts to the refusal of the learned AFT to exercise its jurisdiction on the basis of the law as it stands on the date it is called to adjudicate a matter. The learned counsel for the



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petitioner submits that the learned AFT has to decide on the Review Application considering the law as it stands today. In support, he places reliance on judgments of the Supreme Court in *Indian Petrochemicals Corpn. Ltd. v. Shramik Sena*, (2001) 7 SCC 469; *Harbhajan Singh & Anr. v. State of Punjab & Anr.*, (2009) 13 SCC 608; *Ashok Sadarangani & Anr. v. Union of India & Ors.*, (2012) 11 SCC 321; *Union of India & Anr. v. Biswabijoyee Panigarihi & Anr.*, 2013 SCC OnLine Del 2579, *Union Territory of Ladakh & Ors. v. Jammu & Kashmir National Conference & Anr.*, 2023 SCC OnLine SC 1140; *Indian Council of Agriculture v. Yugal Kishore Sah*, 2024 SCC OnLine Del 7150; *Rajiv Chana v. Union of India*, 2024 SCC OnLine Del 2535; and, *Bhushan v. State*, 2024 SCC OnLine Del 1927.

9. He submits that, in fact, the judgment of *Ex Sgt. Girish Kumar* (supra), which is pending adjudication before the Supreme Court, is not applicable to the facts of the present case and does not deal with the issue of entitlement of service pension. He submits that the said petition deals with a different issue, that is, of determination of broadbanding/rounding off of disability for the purpose of granting disability pension and the related issue of payment of arrears of disability pension as a result thereof. He submits that the issue raised in the Review Application, in fact, has been decided by the Supreme Court in its judgment in *Union of India & Ors. v. V.R. Nanukuttan Nair*, (2019) 19 SCC 690.



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Submission of the Learned Counsel for the Respondents:

10. The learned counsel for the respondents, on the other hand, submits that as a similar issue is pending before the Supreme Court, the learned AFT has rightly exercised its discretion to adjourn the adjudication of the Review Application *sine die* and to await the outcome of the appeal pending before the Supreme Court. He submits that the impugned order, therefore, does not warrant any interference by this Court.

Analysis and Findings:

11. We have considered the submissions made by the learned counsels for the parties.

12. At the outset, we may clarify that we do not intend to go into the merits of the claim of the petitioner pending adjudication before the learned AFT in the Review Application. We, therefore, are also not making any comment on the applicability or otherwise of the judgment of the Full Bench of the learned AFT in *Ex Sgt. Girish Kumar* (supra) or of the judgment of the Supreme Court in *V.R. Nanukuttan Nair* (supra) to the facts of the case of the petitioner. These are issues that are yet to be considered by the learned AFT.

13. The only limited issue to be adjudicated by us in the present petition is as to whether the learned AFT has committed an error in adjourning the adjudication of the Review Application *sine die* only on the ground that an appeal raising a similar issue is pending adjudication before the Supreme Court,



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wherein the order passed by the Larger Bench of the learned AFT has been stayed.

14. In our view, the answer to the above is in the affirmative.

15. Only because an issue of law is pending adjudication before the Supreme Court, in our view, the learned AFT should not have refused to exercise its own jurisdiction to adjudicate on that issue. Refusal of the learned AFT to adjudicate on the issue would, in fact, amount to refusal to exercise jurisdiction vested in it by law. Guidance in this regard may be taken from the judgment of the Supreme Court in *Union Territory of Ladakh* (supra), where the Supreme Court reiterated that the High Courts cannot refrain from deciding cases merely because a leading judgment of the Supreme Court is either referred to a Larger Bench or a Review Petition relating thereto is pending. The Court held the High Courts must proceed to decide the matter on the basis of the law as it stands. Unless specifically directed by the Supreme Court, it is not permissible to await the outcome of a Reference or a Review Petition. We quote from the judgment as under:-

“35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear



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*that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in *National Insurance Company Limited v Pranay Sethi*, (2017) 16 SCC 6805. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.”*

16. The above view has been followed by this Court in its judgments in ***Indian Council of Agriculture*** (supra) and in ***Rajiv Chana*** (supra).

17. In the present case, it has not been shown to us that the Supreme Court has passed any direction in ***Ex Sgt. Girish Kumar*** (supra) that the learned AFT must await the outcome of its decision and not decide on other matters pending before it. The Supreme Court, by its *interim* order dated 13.07.2018, granted a stay on the operation of the judgment of the Larger Bench of the learned AFT. This would not preclude the learned AFT to adjudicate on other petitions that are pending or filed before it on similar issues, in accordance with law as would be applicable to the facts of such cases.

18. In view of the above, we dispose of this petition by reserving liberty to the petitioner to move an application before



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the learned AFT seeking an early hearing of his Review Application, which must be considered by the learned AFT remaining uninfluenced by the fact of pendency of the appeal before the Supreme Court in *Ex Sgt. Girish Kumar* (supra).

19. The petition is disposed of in the above terms. There shall be no order as to costs.

NAVIN CHAWLA, J.

SHALINDER KAUR, J.

DECEMBER 6, 2024/rv/as

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