

Meena Devi and Others Vs. Union of India and Others

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Court : Armed forces Tribunal AFT Chandigarh Bench Chandimandir

Decided On : Feb-19-2014

Judge : Rajesh Chandra, Judicial Member, Vinod Kumar Ahuja, Judicial Member & the Honourable Mr. L.T. Gen (Retd) N.S. Brar, Administrative Member

Appeal No. : O.A Nos. 09, 103 & 1084 of 2011 & O.A Nos. 254 & 714 of 2012

Appellant : Meena Devi and Others

Respondent : Union of India and Others

Judgement :

This Full Bench was constituted to adjudicate whether claims and disputes related to Army Group Insurance Fund (AGIF) benefits were subject to jurisdiction of the Armed Forces Tribunal Act, 2007 and consequently could this Tribunal decide such matters.

Reference for constituting Full Bench came about as a result of a number of judgments where, besides other pensionary and service related claims, the aspect of AGIF benefits were also involved and while deciding these matters, various Benches of the Tribunal had declined to address the issue of AGIF and referred such transferred cases back to the original Civil Court or had declined to go into this aspect in so far as the original applications were filed before this Tribunal. In this context, orders of this Bench in TA No.92 of 2010 Gajan Singh vs Union of India, TA No.814 of 2010-Premi Devi vs Union of India, orders of the Principal

Bench in OA No.125 of 2009 Major Sagarika Singh vs Union of India, O.A No.82 of 2009 Ex Havildar Girdhari versus Union of India and so on, were passed declining to adjudicate on AGIF matters. In the case of OA 09 of 2011, Meena Devi vs Union of India, the attention of the Bench was specifically drawn to the judgment of the Kochi Bench of 22.03.2010 in TA 37 of 2010, A Shihabudeen vs Union of India where the Bench had accepted the AGIF being subject to the jurisdiction of the Armed forces Tribunal and of the Principal Bench of 09.04.2010 in OA 64 of 2009, Maha Singh Dagar vs Union of India where it was held otherwise. The case was therefore referred to the Principal Bench for constituting a full bench.

Consequent to referring the case of Meena Devi(supra) for constitution of a full bench, similar matters being TA 103 of 2011 Roshan Lal vs Union of India, OA 1084 of 2011, Gian Chand Thakur vs Union of India, OA 254 of 2012, Manjit Singh Jhajy vs Union of India and OA 714 of 2012, Harbans Kaur vs Union of India were tagged with this case and have been heard alongwith the same.

The contention of the learned counsel for the petitioner is that all persons subject to the Army Act, Air Force Act and Navy Act fall within the jurisdiction of the Armed Forces Tribunal and the Armed Forces Tribunal is empowered to deal with service matters as defined in Section 2 of the Act which reads as under:-

Section 2

œ2. Applicability of the Act.- (1) The provisions of this Act shall apply to all persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950)

(2) This Act shall also apply to retired personnel subject to the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950), including their dependents, heirs and successors, in so far as it relates to their service matters.?

Then, Army Rule 205 (b) empowers the authorities to make any authorized deductions from the entitlements and those subject to the Act, the same reads as

under:- 3

Rule 205

œAuthorised deductions.- The following deductions may be made from the pay, non-effective pay and all other emoluments payable to a person subject to the Act, namely:-

- (a) Upon the general or special order of the Central Government, any sum required to meet any public claim there may be against him, any regimental debt that may be due from him or any regimental claim;
- (b) Any sum required to meet compulsory contributions to any provident fund or any benevolent or other fund approved by the Central Government.

Explanation “

(i) œPublic claim? means any public debt or disallowance including any over-issue; or a deficiency or irregular expenditure of public money or store of which, after due investigation, no explanation satisfactory to the Central Government is given by the person who is responsible for the same.

(ii) The aforesaid deductions shall be in addition to those specified in the Act.?

It was argued that as the contribution to AGIF is a compulsory and authorized deduction from the emoluments of individuals, it is a service matter subject to the jurisdiction of the Armed Forces Tribunal. It is further stated that the Army Group Insurance Scheme was authorized to be established vide Ministry of Defence, Govt. of India letter dated 01.01.1976. The Scheme is presently governed by Army Order 23 of 2002 (Annexure R-3).

Learned counsel for the petitioner thereafter brought to our notice the decision of the Kerala High Court in the case of A.Shihabudeen versus MD Army Group Insurance Fund and others [OP(AFT) No 2527 of 2011 decided on 17.08.2011] where the Kochi Bench had allowed the benefits of AGI to the petitioner which on the basis of a Review Petition was disallowed on the ground that AGIF is a Society registered under the Society Registration Act and does not come under the Army

Act and, therefore, the Tribunal had no jurisdiction to decide any claim against the AGIF. While allowing the Review Petition the Kochi Bench followed the decision of the Principal Bench in Maha Singh Dagara case (supra) and recalled the order which was passed in favour of the petitioner. This recall order came to be challenged before the Kerala High Court which held the Tribunal to be in error in reviewing its earlier order holding the AGIF to be amenable to the jurisdiction of the Tribunal. However, this question of jurisdiction had already been referred by this Bench of the Tribunal for constitution of a Full Bench before the judgment of the Kerala High Court.

The respondents, on the other hand, stated that the purpose of establishing the AGIF was that Insurance Companies do not cover any war risk or liability and, therefore, there was a need to set up an Insurance Company which can also cover such liability. The AGIF came to be set up without any financial assistance from the Government and was registered under the Society Registration Act on 01.01.1976. The Armed Forces or the MoD has no control over the funds of the AGI which are handled by a Managing Committee. The AGIF functions under its own Rules and Bye laws. The staff is appointed by the managing Director and paid out of AGIF funds. It is not subject to audit by the Auditor General of India. No payment of AGIF benefits is made from the Consolidated Fund of India or any other Government funds. The AGIF has a Board of Governors which manages the affairs of the Society and frames Rules and benefits as per requirements of the Scheme. Therefore, the AGIF could not be said to be a service matter for the purposes of jurisdiction of the Tribunal. 4

It was also stated that the benefits of the Scheme are based on their own Rules and are independent of any benefits or Rules framed by the Government for defence personnel under similar circumstances. As an example, it was quoted that the AGIF provides disability benefits to personnel whose tenure was cut short and were invalided out even where the disability may not be attributable to military service.

Heard the learned counsel for the parties.

At the outset, we may note that the object of setting up the Armed Forces Tribunal under the Act of 2007, as stated in its preamble, is to provide a forum for settlement of disputes of all service matters of defence personnel covered by the respective Army, Navy and Air Force Acts. It would be against the spirit of the Act and setting up of the Tribunal if service personnel or their dependents were to litigate before the Armed Forces Tribunal for some service benefits and before a Civil Court for AGI benefits. We also find that it is obligatory that every Army personnel has to be a member of the AGIF for which compulsory contribution is recovered from his emoluments. It is not an option for any individual to join or decline to join the Scheme. Then a perusal of Section 3(o) of the Armed Forces Tribunal Act, 2007, which defines 'service matters', reads as under:-

Section 3(o) : 'service matters', in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), mean all matters relating to the conditions of their service and shall include-

- (i) Remuneration (including allowances), pension and other retirement benefits
- (ii) Tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions;
- (iii) Summary disposal and trials where the punishment of dismissal is awarded;
- (iv) Any other matter, whatsoever,

But shall not include matters relating to-

xxx xxx

In our view, this Section encompasses matters related to AGIF under 'other retirement benefits'[(i) above]and under 'any other matter, whatsoever'[(iv) above].

We also find force in the argument of the petitioners that deduction of contribution for AGIF under Army Rule 205(b) have been taken as authorized deductions from

service personnel for the purpose which consequently must be taken as a service matter and cannot be excluded.

A similar view was taken by the Hon'ble Kerala High Court in the case of A. Shihabudeen vs MD Army Group Insurance Fund and others (supra), which was decided subsequent to the reference for constituting a full bench.

In view of the above discussion we are of the view that matters related to AGIF in respect of its beneficiaries are within the jurisdiction of the Armed Forces Tribunal Act, 2007 and can be adjudicated by the Tribunal. 5

Having arrived at the above conclusion we make it clear that this shall not be a precedent or analogy with respect to any other welfare scheme, organisation or association like AWWA, AWHO, Welfare Funds etc run by the three Defence Services for the benefit of their personnel. We also make it clear that the membership, subscription and benefits of the AGIF shall be governed by the Rules, Policies and Bye Laws framed therein and shall not be linked with any similar policies or benefits like disability pension, ex gratia, broad banding etc as part of the other service benefits extended by the Government.

The reference is answered accordingly.

These petitions may be listed before a regular bench for adjudication, including on the aspect of AGIF, on their own merits.

The original judgment shall be kept on the file of O.A No. 09 of 2011 whereas copies shall be kept on other connected files.

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