

SUPREME COURT OF INDIA

Naib Subedar Naresh Chand

Vs.

Union of India & Ors.

C.A.No.11017of 2013

(T.S. Thakur and Vikramajit Sen, JJ.)

13.12.2013

JUDGMENT

Vikramajit Sen, J.

1. Leave granted. This Appeal assails the order dated 31.5.2011 of the Armed Forces Tribunal (for short, 'AFT'), Principal Bench, New Delhi pronounced in O.A. No.63 of 2010.

2. In *Union of India vs. Brigadier P.S. Gill*¹ this Court speaking through one of us, Thakur J, has opined that there is no vested right of appeal to the Supreme Court against the final decision of the AFT and accordingly it is imperative that every appeal to the Supreme Court should be preceded by a plea made before the AFT to the effect that the controversy raises a question of law of general public importance. In the event that the AFT disagrees it is necessary for the Appellant to apply for leave of this Court in terms of Section 31 of the Armed Forces Tribunal Act, 2007 (for short, 'the Act'). The Appellant has neither approached the AFT for leave to appeal under Section 31 of the Act nor has he filed any application for grant of leave to appeal without pursuing former course.

3. A perusal of the impugned Order discloses that the Appellant has been granted substantial relief by the AFT in that a direction has been issued to the Respondents to reckon his seniority in the rank of Naik w.e.f. 1.4.1988 with all consequential benefits without effect on pay and allowances except for the pension that he will be entitled to

draw as Sub; had his case been correctly disposed off he would have retired as Sub and, therefore, financial dues only effecting his pension shall be paid w.e.f. 31.3.2009 i.e. the date of his retirement from service. The Respondents had made a futile effort for correction of the Judgment on the grounds that the Appellant's date of retirement was 31.7.2009 and therefore the relevant date should have been 31.7.2009 and not 31.3.2009. The AFT however, found no reason for altering its Judgment since it appears that the date 31.3.2009 was found relevant as persons junior to the Appellant had been promoted to the rank of Naik on that date.

4. The Appeal discloses that it has been filed because the AFT had only partly allowed the Original Application and had failed to grant promotion to the Appellant to the rank of Subedar with effect from 1.3.2009; that the AFT erred in omitting to direct the Respondents to grant to the Appellant ante-dated seniority in the rank of Paid Acting Naik with effect from 1.4.1988; the rank of Havildar with effect from 1.1.1991; the rank of Naib Subedar with effect from 1.1.2006 and the rank of Subedar with effect from 1.3.2009.

5. We have carefully considered the impugned Judgment but are unable to locate the reasons that have persuaded the AFT to grant only partial relief. There can be no gainsaying that where a component of the relief prayed for is being denied it is an imperative that reasons should be disclosed for doing so. This is as important as justifying the grounds on which the grant of relief is predicated. We would be handicapped and accordingly remiss in taking up the issue of the reliefs that have not been granted, without having the benefit of the views of the AFT, especially since our decision will have widespread ramifications.

6. It is for these reasons that we think it unnecessary to go into the question whether the Appeal is maintainable for failure to adhere to the dicta in Brigadier P.S. Gill. Accordingly, the Appeal is disposed of granting the Appellant a period of sixty days within which to approach the AFT for appropriate remedy.

Judgment referred

¹2012 (4) SCC 0463