

THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (S/S) No. 691 of 2012.

Vijay Prakash Thapa No. 5249004 Ex. Rect. S/O Shri Hari Singh.

... Petitioner.

Vs.

Union of India and others.

... Respondents.

Mr. Dinesh Chauhan, Advocate, learned counsel for the petitioner.

Mr. Vikas Pande, learned Standing Counsel Union of India for the respondents.

Date May 25, 2012.

Hon'ble B.S.Verma, J. (Oral)

(Interim Relief Application No. 5135 of 2012)

By means of this writ petition, the petitioner has sought the following relief:-

i) Issue a writ order or direction in the nature of mandamus directing the respondent to grant disability pension and other retiral benefit to the petitioner.

ii) Issue any other or further writ, order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case.

iii) To award the cost of the petition in favour of the petitioner.

Learned counsel appearing for the Union of India, Mr. Vikas Pande, has raised a preliminary objection and submitted that now the jurisdiction to decide the controversy involved in the present writ petition is vested in the Armed Forces Tribunal, which has already been established.

I have perused the provisions of Section 14 and Section 34 of the Armed Forces Tribunal Act, 2007.

Sub-section (1) of Section 14 of the Armed Forces Tribunal Act, 2007 reads as under:-

“14. Jurisdiction, powers and authority in service matters.-(1) Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority, exercisable immediately before that day by all courts (except the Supreme Court or a High Court

exercising jurisdiction under Articles 226 and 227 of the Constitution) in relation to all service matters.”

Section 34 of the Armed Forces Tribunal Act, 2007 reads as under:-

“34. Transfer of pending cases.”*-(1) Every suit, or other proceeding pending before any court including a High Court or other authority immediately before the date of establishment of the Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based, is such that it would have been within the jurisdiction of the Tribunal, if it had arisen after such establishment within the jurisdiction of such Tribunal, stand transferred on that date to such Tribunal.*

(2) Where any suit, or other proceeding stands transferred from any court including a High Court or other authority to the Tribunal under sub-section(1)-

(a) the court or other authority shall, as soon as may be, after such transfer, forward the records of such suit, or other proceeding to the Tribunal;

(b) the Tribunal may, on receipt of such records, proceed to deal with such suit, or other proceeding, so far as may be, in the same manner as in the case of an application made under sub-section (2) of Section 14, from the stage which was reached before such transfer or from any earlier stage or de novo as the Tribunal may deem fit.”

Having considered the submissions of the learned counsel for the respondents, I am satisfied that the jurisdiction to hear the present writ petition is vested with the Armed Forces Tribunal under Section 14(1) of the Armed Forces Tribunal Act, 2007. This writ petition has been filed by the petitioner on 24th May, 2012 before this Court. Therefore, I am not inclined to entertain the writ petition on the ground of alternate remedy.

Accordingly, the writ petition is dismissed on the ground of alternate remedy.

(B.S.Verma,J.)