

**ARMED FORCES TRIBUNAL, CHANDIGARH
REGIONAL BENCH AT CHANDIMANDIR**

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OA 1208 of 2011

Balwant Singh **Petitioner(s)**

Vs

Union of India and others **Respondent(s)**

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For the Petitioner (s) : Mr. Bhim Sen Sehgal, Advocate

For the Respondent(s) : Mrs Sangeeta Dubey, CGC for Resp
No 2 to 4

Mr. Sandeep Bansal, CGC for Resp
No 1, 5 to 9

Coram: Justice Prakash Krishna, Judicial Member.

Lt Gen (Retd) NS Brar, Administrative Member.

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**ORDER
15.01.2014**

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Whether a claim for disability pension by the members of GREF is amenable to the jurisdiction of the Armed Forces Tribunal is the point mooted in the present case.

The background facts may be noticed in brief.

The present petition has been filed with the allegations that the petitioner earlier served Indian Army from 17.8.1963 to 2.10.1983 for a total period of 20 years and 3 months and was retired from the rank of Havildar. He is also getting service pension from the Army. After retirement from the Army, the petitioner was re-employed in General Reserve Engineer Force with effect from 24.11.1987 as MT(DVR) and in that capacity served most of the time in the field areas.

In the month of August, 1996, when the petitioner was deployed with Attachment DETT) MTE under Sector 53 Road Construction Company, on 12.8.1996, scuffle took place wherein according to the petitioner, some Army persons of 9-Assam Regiment manhandled the petitioner who were intoxicated, with the result the

petitioner received bodily injuries. He received medical treatment, as per Para 9 of the petition. The petitioner retired from the GREF on 3.7.2004 after rendering total service of 16 years and 9 months but has not been granted disability element of pension. He had preferred a Writ Petition No. 1262 of 1999 before the Punjab and Haryana High Court in respect of above incident dated 12.8.1996 which was dismissed on 1.2.1998 on the ground of lack of territorial jurisdiction in the matter. The GREF personnel are governed by the Army Act 1950 and as such the petitioner is entitled to get the disability pension from the respondents. Hence the present petition.

In reply, besides disputing of the claim of the petitioner to receive disability pension from the Army, it has been pleaded that the present petition is not maintainable before the Armed Forces Tribunal, as it is not a service matter, either under Army Act 1950, or the Navy Act 1957 or Air Force Act 1950.

The learned counsel for the petitioner submits that he does not propose to file the rejoinder/affidavit and the matter with regard to maintainability of the present petition before the Tribunal may be considered and decided.

Heard the learned counsel for the parties and perused the record. The admitted case of the petitioner is that earlier he joined the Indian Army and after superannuation from the Indian Army, joined the GREF. The submission is that in view of the decision of the Punjab and Haryana High Court in CWP No. 14427 of 1993 – Smt. Bachan Kaur Vs Union of India and others decided on 18.9.1997, GREF personnel are also Army personnel and are entitled to claim

pension and other retiral benefits as applicable to Army personnel. A bare perusal of the aforesaid judgment of the High Court would show that the High Court has followed the decision of the Apex Court in R. Viswan and others Vs Union of India and others, AIR 1983 SC 658. Therefore, the aforesaid judgment of the Apex Court is the key to the question posed in the present petition.

We now proceed to examine the legal issue raised by the parties.

To begin with, it would be better for proper understanding the issue, to consider the nature and character of GREF, the reasons for its establishment, its objects, duties, source of recruitments in GREF etc.

The full form of GREF is General Reserve Engineering Force.

In the year 1960, it was felt that economic development of the North and North-Eastern Border areas were greatly handicapped by meagre and inadequate communications and defence of these areas also required a net work of roads for effective movement and deployment of Armed Force. The Government of India, therefore, created several posts in the Directorate General of Works, Army Headquarters for work connected with the development of border roads as per letter dated 9th April, 1960 addressed by the Under Secretary to Government of India, Ministry of Defence to the Chief of the Army Staff. The Government of India subsequently sanctioned the post of DIRECTOR GENERAL BORDER ROADS in the rank of Major-General in the Directorate General of Works, Army Headquarters. Subsequently it was decided that this organisation should not continue as part of the Directorate General of Works, Army

Headquarters and should be under the Border Roads Development Board set up by the Government of India as the separate self contained Authority under the Chairmanship of the Prime Minister with the Defence Minister as Deputy Chairman, the Financial Adviser(Defence) as Financial Adviser and a few other members nominated by the Prime Minister. The Government of India by a letter dated 16th June, 1960 directed that the General Reserve Engineering Force will be “under the overall command of the Director General Border Roads under whom the Regional Chief Engineers/Independent Deputy Chief Engineers who will exercise command over the units of the Force placed under their control.” The General Reserve Engineering Force(GREF) thus was raised. The said Force is organised on Army pattern in units and sub units is another thing.

The personnel of GREF are drawn from Army and by direct recruitment. The direct recruited personnel who do not come from Army are subjected to Army discipline having regard to the special character of GREF and its role. The GREF has been formed to meet the operational requirements of the Army. The GREF personnel are recruited on certain terms and conditions of appointment. The relevant terms of appointment include the following:-

“5 (iv). You will be governed by the provisions of Central Civil Service (Classification, Control and Appeal) Rules, as amended from time to time. Notwithstanding the above, you will be further subject to certain provisions of the Army Act, 1950, and Rules made thereunder, as laid down in SROs 329 and 330 of 1960, for purposes of discipline. It will be open to the appropriate disciplinary authority under the Army

Act 1950 to proceed under its provisions wherever it considers it expedient or necessary to do so.”

“5 (vi). On your appointment, you will be required to wear the prescribed uniform while on duty, abide by such rules and instructions issued by your superior authority regarding discipline, turnout, undergo such training and take such departmental test as the Government may prescribe.”

(Emphasis supplied)

The learned counsel for the petitioner submits that the Central Government issued notification No. SROs 329 and 330 dated 23rd September, 1960 making Section 21 of the Army Act 1950 and Chapter IV of the Army Rules 1954 applicable to General Reserve Engineering Force. Therefore, the personnel of GREF are governed by the Army Act. In support of the above, reliance has been placed to the judgment of Hon'ble Supreme Court of India in R. Viswan and others Vs Union of India and others, AIR 1983 SC 658.

In the aforesaid case of R. Viswan, the case of the petitioners therein was entirely different. The petition was filed by the personnel of GREF questioning the legality and validity of the said notification extending certain provisions of Army Act with regard to maintenance of discipline on the ground that they are not members of Armed Forces and therefore, the impugned notification making certain provisions of Army Act and Rules applicable to them, is ultra-vires. In nutshell, it was contended by the petitioners that they are members of GREF and therefore, are not subjected to the Army Act and Rules. By the notification impugned therein, it was provided that the personnel of GREF shall also be subjected to certain provisions of Army Act and Rules **so far as it relates to discipline is concerned**. There the

petitioners were deserters from service and were arrested in pursuance of the arrest warrants. They were charged before the Court Martial for offences under Section 63 of the Army Act. The Court Martial proceedings took place in accordance with the procedure prescribed by the Army Act 1950 and Army Rules 1954 as applicable to the members of GREF and on being convicted, they were dismissed from service. In this factual background, the notification impugned in the writ petition making the certain provisions of Army Act applicable to GREF personnel was challenged. The Apex Court while upholding the validity of the notification had an occasion to consider the history of GREF, how it came to be in existence, source of recruitment of personnel of GREF etc. in detail.

In nutshell, while upholding the validity of the notification impugned therein, the Apex Court held that so far as disciplinary proceedings are concerned, GREF personnel are members of Armed Forces within the meaning of Article 33. To this limited extent, GREF personnel have been held to be members of the Armed Forces. That is all. But to say that GREF personnel are members of Armed Force is quite distinct thing and it would be a misreading of the judgment of the Apex Court.

The aforesaid judgment of the Apex Court should be read and understood in the light of the controversy involved therein, issues raised and decided. At the cost of repetition, only limited issue with regard to the discipline and control by the Army over GREF personnel had been agitated. To put it differently, whether GREF personnel are

members of Armed Forces or not, was not the issue involved therein. Therefore, it cannot be said that the Supreme Court has laid down that GREF personnel are also Armed Forces personnel.

On a close and meaningful reading of the aforesaid judgment would show that the Apex Court while considering the terms and conditions of the appointment in GREF has observed as follows :-

“The result is that the directly recruited GREF personnel are governed by the provisions of Central Civil Service(Classification, Control and Appeal) Rules 1965 as amended from time to time but for purpose of discipline, they are subject to certain provisions of the Army Act 1950 and the Army Rules 1954 as laid down in SROs 329 and 330 dated 23rd September 1960”.

(Emphasis supplied)

Also, it could not be disputed by the petitioner’s counsel before us that the petitioner is not governed by the provisions of Central Civil Service(Classification, Control and Appeal) Rules 1965. This provides complete answer to the point raised and pressed by the petitioner.

The other aspect of the case is that had the GREF personnel being part of Armed Forces, there would have been hardly any occasion for the Central Government to issue a notification impugned before the Supreme Court in the case of R. Viswan(Supra). This is indicative of the fact that GREF personnel are not treated as Army personnel.

The Supreme Court has noticed that it is Border Roads Organisation which has overall control on GREF which was earlier

created as part of Army Headquarters but it was later on separated from Army Headquarters and placed GREF under Border Roads Development Board. The relevant paragraph of the judgment is reproduced below :-

“It is significant to note that the Border Roads Organisation, which is in overall control of GREF was originally created as part of Army Headquarters and it was only later, for reasons of high policy, that it was separated from Army Headquarters and placed under the Border Roads Development Board. Though the budget of the Border Roads Organisation forms part of the budget of Ministry of Shipping and Transport, the financial control is vested in the Ministry of Finance (Defence). The entire infra-structure of GREF is modelled on the pattern of the Army and it is organised into units and sub-units with command and control system similar to that in the Army. The personnel of GREF right from Class IV to Class I have to be in uniform with distinctive badges of rank and they have a rank structure equivalent to that of the Army. GREF is primarily intended to carry out defence and other works projected by the General Staff, Army Headquarters and it is only where spare capacity is available that GREF undertakes works of other ministries or departments on agency basis and there also, preference is given to strategic and other roads in sensitive areas. The funds which are provided to the Border Roads Organisation are meant exclusively for carrying out those works and they are paid for by the respective ministries or departments and where applicable, agency charges for executing the works are also collected. The statistics given in the earlier part of the judgment show that the major portion of the work executed by GREF units consists of tasks entrusted by the General Staff, Army Headquarters and only a small percentage of the work is being done on behalf of other, ministries or departments. GREF units carry out essentially those tasks which are otherwise carried out by Army Engineering Regiments and they provide engineering support to the Army both during peace time as also during hostilities. It was found necessary as a result of a major review carried out by Army Headquarters after 1971 that a minimum of 17 Border Road Task Force and 34 Pioneer Companies would be permanently required for providing engineering support to the Army and accordingly 17 Border Road Task Force and 34 Pioneer Companies have been made permanent and their composition has been reorganised in

accordance with the recommendations of the Army Headquarters. These 17 Border Road Task Force and 34 Pioneer Companies are being maintained as essential units of GREF for meeting the operational requirements of the Army, even if sufficient work is not available for them at any given point of time.”

The aforesaid observation also fortifies our above view.

It is interesting to note one judgment of the Apex Court in Ramesh Singh Vs Union of India and others, (2008) 5 SCC 173. A writ petition under Article 32 of the Constitution of India was filed before the Apex Court raising a grievance that GREF personnel should get parity in the matter of service benefits so far as the Army personnel and officers working in GREF are concerned. The grievance of the petitioner was that he and other employees are serving in the Border Roads Organisation and the Government of India is bound to treat equally with the members of the Armed Forces and there should not be any distinction pertaining to extending the facilities and benefits in the service including allowances, pay etc. Reliance was placed on R. Viswan Vs Union of India (Supra). The Apex Court while dismissing the writ petition found that 4TH CENTRAL PAY COMMISSION IN ITS REPORT IN PARA 10.472 HELD THAT THERE WAS NO SCOPE FOR ANY PARITY AS CONTENDED. The same position was reiterated by the 5th Central Pay Commission. This is also indicative of the fact that GREF personnel are not at par with Army personnel and they are not members of Armed Forces. It may also be noted that the superannuation age of GREF personnel is as per civilian employees and not as per the Army terms.

Adverting to the facts of the present case, admittedly the petitioner retired from Indian Army after reaching the age of superannuation. Thereafter he joined the GREF where he worked for full length of service around 16 years 9 months and was superannuated. As confirmed by the learned counsel, the petitioner is drawing pension from the Army for Army service and from GREF for that service.

Section 2 of the Armed Forces Tribunal Act 2007 provides that it is applicable to present and retired personnel subject to the Army Act, Navy Act and Air Force Act, including their dependants, heirs and successors, in so far as it relates to their service matters. The words 'service matters' have been defined in Section 3(o) of the Act. The petitioner purposely has not produced his appointment letter with GREF. Had it been so produced, it would have shown light as to whether he was appointed under the Army Act, Navy Act or the Air Force Act. It is the appointment letter which governs the terms and conditions of the appointment. Admittedly, the petitioner is getting pension for his service rendered by him in the Army. He, on own showing, received injuries while in the employment of GREF. The petitioner being a superannuated employee from the Army cannot lay any claim before the Army for the injury, if any suffered, after his superannuation from Army. Claim, if any, lies with the GREF as per their rules.

Strong reliance was placed upon a judgment of Punjab and Haryana High Court in Writ Petition No. 14427 of 1993 – Smt.

Bachan Kaur Vs Union of India and others decided on 18.9.1997. The High Court has proceeded to uphold the claim of the late petitioner therein on the basis that the controversy is concluded in R. Viswan's case itself, in P. Chandra Mouly V. Union of India and another and by a Single Bench decision of the Karnataka High Court. The relevant paragraphs from the judgment are reproduced below :-

“In P. Chandra Mouly's case (supra) also the Hon'ble Supreme Court relying upon R. Viswan's case observed that the position was now fully settled that members of the G.R.E.F. were part and parcel of the Armed Forces as the provisions of the Army Act were applicable to them. To our mind, the observation of Singhvi, J. that the judgment in R. Viswan's case would have to be read only in the context of the applicability of Article 33 of the Constitution to the members of the G.R.E.F. is to our mind without basis in the light of the two judgments of the Hon'ble Supreme Court.

We, therefore, hold that members of the G.R.E.F. are members of the armed forces for the purposes of laying claim to pension and other retiral benefits and should a dispute arise this Court has the jurisdiction to entertain and decide the same in exercise of its jurisdiction under Art. 226 of the Constitution. We are therefore of the opinion that Datta's case (supra) has not been correctly decided and is accordingly over-ruled.”

Reading of the above quoted portion, would show that the High Court proceeded in the matter of treating that the position is fully settled that members of GREF were part and parcel of Armed Forces. It appears that the attention of the Hon'ble Judges was not invited towards the various paragraphs of the judgment in R. Viswan's case, the controversy involved therein and issue laid down therein. With great respect to Hon'ble Judges, it appears that the entire matter was not placed before them. Only limited issue as to whether for the

purposes of discipline, GREF personnel can be treated subject to certain provisions of Army Act or not was up before the Apex Court. In that context, the observations made by the Apex Court should be read and understood.

The persons who are subject to Army Act 1950 find mention in Section 2(1) of the Army Act 1950. It contains clauses (a) to (i). The petitioner could not show that he falls in any of these clauses after retirement from the Army while working as GREF personnel. Meaning thereby, before invoking the jurisdiction of Armed Forces Tribunal, when a dispute is raised, it is incumbent upon such persons to show that he falls in any of the clauses (a) to (i) of Section 2(1) of the Army Act, which the petitioner has failed to do so. At any rate, the aforesaid judgment of Punjab and Haryana High Court will not be of any assistance to the petitioner as the provision of Section 2 of the Armed Forces Tribunal Act 2007 which came on statute later on, was not there before the Punjab and Haryana High Court. The Section 2(1) of the Armed Forces Tribunal Act 2007, dealing with the applicability of the Armed Forces Act expressly provides that the provisions of Armed Forces Act shall apply to “All persons subject to the Army Act 1950.....” Neither any notification nor any material was placed before us to show that any such notification in respect of GREF was issued by the Central Government under Section 2(1)(i) of the Army Act 1950.

On record it has come that the petitioner had earlier filed writ petition being CWP No. 1262 of 1999 in respect of the same incident dated 12.8.1996 claiming certain reliefs. The said writ petition was dismissed on 1.2.1999 on the ground of lack of territorial jurisdiction. The petitioner kept quiet thereafter and filed the present petition with delay after about 12 years and has taken a plea that since the claim of the petitioner is with regard to pension, petition is not barred by time. On 31.7.2004, the petitioner was superannuated from GREF. The present petition has been filed on 18.8.2011. However, prima facie, we are of the view that petition is barred by time and there is no explanation, explaining the delay. We are not recording final finding as the arguments were not heard on the question of limitation.

In column 6 of the petition, the petitioner has stated that he has exhausted the remedies of representations to the authorities concerned for the purpose of grant of disability pension but no positive response has been given to the petitioner by any of the respondents. However, along with the petition, particulars of any such representation, if any, have not been given nor copy of any representation has been annexed in the petition either along with Compilation-I or with Compilation-2.

Viewed as above, we are of the opinion, there is substance in the objection raised by the respondents that this Tribunal has no jurisdiction over the matter. The petition is, therefore, dismissed as the Tribunal is not entitled to entertain the claim for disability pension by members of GREF.

This decision is likely to effect on number of GREF personnel and we were informed that the same issue is also under consideration before the Apex Court in some other matter. It is clarified that law point of general public importance is involved in the decision, therefore, leave to appeal to the Supreme Court under Section 31 of the Armed Forces Tribunal Act 2007 is granted to the petitioner.

(Justice Prakash Krishna)

(Lt Gen (Retd) NS Brar)

15.01.2014

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Whether the judgment for reference to be put up on website – Yes/No