

**ARMED FORCES TRIBUNAL
CHANDIGARH BENCH BAR ASSOCIATION**
(Near Tank TCP, Chandimandir, District- Panchkula, Haryana-134107)

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PRESS NOTE, Monday, the 16th October 2023

THE ARMED FORCES TRIBUNAL CHANDIGARH BENCH BAR ASSOCIATION TAKES STRONG EXCEPTION TO THE DEMEANING COMMENTS MADE BY THE LEARNED ATTORNEY GENERAL IN OPEN COURT AGAINST JUDICIAL BODIES AND DISABLED SOLDIERS

The members of this Bar Association watched in disbelief the highly disturbing comments made by the Learned Attorney General ("AG"), obviously on being briefed regarding the same by certain unknown entities, wherein he cast aspersions on judicial bodies and verdicts in favour of disabled soldiers calling the same a "racket", as also reported by the media.

Brief Background of the Case in the Supreme Court where these comments were made:

The case in which the said comments were made was filed before the Hon'ble Supreme Court by this Bar Association regarding the sudden transfer of the Judicial Member-cum-Head of Department of the Chandigarh Bench of the Armed Forces Tribunal ("AFT") to Kolkata. The Judicial Member, who was going to hear contempt petitions the next day on the subject, had passed strong orders against non-compliance of 5 to 6 year old judgments of the AFT. The other prayer was to take the AFT out of the purview of the Ministry of Defence ("MOD"), as already directed by Constitution Bench decisions of the Hon'ble Supreme Court, which have not been given effect to till date. In the past, as this Association had pointed out, the Ministry had been directly interfering in the judicial functioning by seeking comments/inputs/reports from the AFT on its judicial orders which the Judicial Member had objected to. Though the Hon'ble Supreme Court closed the first prayer of this Association by observing that the transfer was only temporary since the Kolkata Bench did not have a Judicial Member at present, the Ministry was asked to file its reply on the second prayer. During the course of hearing, the Learned AG, obviously on being briefed in this manner, made many disparaging, factually incorrect and derogatory comments regarding judicial functioning of the AFT and called disability pension cases of disabled soldiers a "racket". The uncharacteristic remarks by the Learned AG, who is a thorough gentleman, clearly were based on what he was briefed.

This Bar Association while taking strong exception and opposition against such statements, puts the following on record, which reflect not only direct assault on the independence of the AFT but also an affront to the sacrifices of our soldiers for this nation. Further, such attempts are aimed at weakening the will and resolve of other Members of the AFT.

The statement of the Attorney General on there being a "racket" of disability pensions:

The following points are worth putting on record-

- All cases of disability pension have been decided and settled by the Hon'ble Supreme Court and Hon'ble High Courts and yet disabled personnel are being forced to litigate in the AFT with individual cases. The AFT is only passing orders based on law settled by the Supreme Court. Many such orders have been challenged and upheld till the Supreme Court by detailed judgments. In that sense, the statement of the AG reflects his poor opinion on the law laid down by the Hon'ble Supreme Court on disability benefits.
- On losing a case, the only way for the MoD is to challenge it judicially before a higher forum, and not make wild allegations based on "financial implications" of judgments, which demean the sacrifices of our brave soldiers. Moreover, more than 15000 cases of disability pension have been decided in favour of disabled soldiers by the Hon'ble Supreme Court, Hon'ble High Courts and AFT, and to call all these cases a "racket" does not behove the Learned AG. On 10th Dec 2014 in a bunch matter led by Civil Appeal 418 of 2012, more than 800 appeals filed against disabled soldiers by the MoD were dismissed on a single day by a Three Judge Bench of the Hon'ble

Supreme Court, was that a “racket” in the opinion of the Learned AG? Hundreds of frivolous appeals filed by the MoD in disability pension matters were later withdrawn on directions of the Prime Minister, Mr Manohar Parrikar and Ms Nirmala Sitharaman, was that a “racket” as per the Learned AG? By their very nature, almost all service, pay and pension matters in all Courts and tribunals such as CAT and AFT involve financial implications and the Chandigarh Bench has had the highest caseload and the best disposal rate since 2009.

- Hundreds of soldiers who have lost their limb or suffered grave medical conditions due to stress and strain of military service are currently before various Courts seeking disability benefits, and their widows are seeking death benefits due to death in harness due to disabilities. Are they “racketeers”? The learned AG must spend a day in the life of a common soldier to know the reality of military life!
- The cases in which strong orders were being passed by the said Judicial Member, who is known for his uprightness and high integrity, did not even relate to disability pension but were regarding execution petitions for the correct pension to the rank of “Honorary Naib Subedar” based on orders that were passed way back in the year 2017, while the concerned Judicial member had joined the AFT only in 2021. His rate of disposal of other disability matters too was much lower than other Judicial Members who have adorned the seats of the AFT in the past. The Learned AG’s statement is demeaning to all such Judicial Members, past, present and future, as also towards lawyers practicing in the AFT.
- Another casual remark regarding arrears of “lacs” of rupees in some odd case being directed to be paid by the AFT was made in open court, which had no connection whatsoever with the case being heard by the Court. On deeper analysis, we have discovered that those AFT orders simply emanate from MoD Letter No 12(28)/2010-D(Pen/Pol) dated 10th Feb 2014 issued in terms of directions of the Hon’ble Supreme Court in SLP(Civil) 20868/2009 *Union of India vs Sinchetty Satyanarayan* decided on 23rd Feb 2012 in which the then Defence Minister had conceded that illegally held back disability pension & family pension arrears would be released to the affected parties with effect from 01st Jan 1973. The matter, therefore, is covered by MoD policy itself. It may serve well for the Learned AG to take to task the person who wrongly briefed him about the issue by hiding the facts.
- Thousands of orders passed by the AFT are lying unimplemented by the Ministry of Defence turning such orders literally into wastepaper, does this not prick the conscience of top law officers?

The statement of the Learned AG that the Judicial Member-cum-Head of Department was being advised by the Chairperson regarding the execution petitions, and that the Learned AG was himself following up the issue for the past one month:

The following points are worth putting on record-

- Can the Chairperson, who is only the administrative head, advise another Judicial Member on his judicial functioning and does this not amount to admission of interference in judicial functions of a Judge?
- Can the Chairperson, share this information with the MoD or with the Learned AG who represents the Ministry, the said Ministry itself being the primary litigant facing the heat of the orders of the AFT?
- Can the Chairperson, interact with the MoD (the primary opposite litigant in every case in the AFT) on judicial functioning of one of the Judicial Members, as disclosed by the Learned AG, when the Chairperson’s file for extension/reappointment itself is reportedly pending before the same Ministry, which is also legally impermissible since as per the Tribunal Reforms Act, 2021, the vacancy needs to be re-advertised and the incumbent Chairperson can only be given ‘preference’ over other applicants before the selection committee. Can extension/reappointment be granted in a stealthy manner without seeking other applications from other eligible former Judges?

The real racket:

The real racket is the MoD filing mindless unnecessary appeals, reviews and “leave to appeal applications” against disabled soldiers, widows and old pensioners in settled matters, even against legal advice and even against direct orders of the successive Defence Ministers, by denting public exchequer and wasting tax payers’ money, despite having faced multiple strictures by Courts.

The following observations of the Hon’ble Supreme Court throw more light on this:

Civil Appeal Diary Number 10713 of 2021 Union of India vs Peeyush Bahuguna decided on 25th March 2022:

"We must observe and express our displeasure at the manner in which the appellants (MoD) have been filing appeals against grant of disability pensions, even where the legal issue is settled."

Civil Appeal Diary Number 8754 of 2018 Union of India vs Pirthwi Singh decided on 24th April 2018, while imposing costs on the MoD of Rupees One Lac:

"The couldn't-care-less and insouciant attitude of the Union of India (MoD) with regard to litigation, particularly in the Supreme Court, has gone a little too far as this case illustrates.....To make matters worse, in this appeal, the Union of India has engaged 10 lawyers, including an Additional Solicitor General and a Senior Advocate! This is as per the appearance slip submitted to the Registry of this Court. In other words, the Union of India has created a huge financial liability by engaging so many lawyers for an appeal whose fate can be easily imagined on the basis of existing orders of dismissal in similar cases. Yet the Union of India is increasing its liability and asking the taxpayers to bear an avoidable financial burden for the misadventure. Is any thought being given to this? To say the least, this is an extremely unfortunate situation of unnecessary and avoidable burdening of this Court through frivolous litigation which calls for yet another reminder through the imposition of costs on the Union of India while dismissing this appeal. We hope that someday some sense, if not better sense, will prevail on the Union of India"

Obviously, the Learned AG's statements are at odds with the above observations. It is our earnest hope, therefore, that the Learned AG would introspect to identify the real "racket" keeping in view the mindless litigation initiated since past many years by the MoD which is continuing unabated and non-implementation of judicial orders. It is not the disabled soldiers or widows of soldiers or the Courts who are indulging in a "racket" but most likely it is those providing him such baseless inputs who are actually involved in at least a moral and ethical "racket", and who, after losing cases till the highest Court of the Land, start demeaning the poor litigants, who are in any case unequal opponents keeping in view their financial state as opposed to the vast & mighty legal machinery at the disposal of the MoD. When the concerned officers face strict orders, they celebrate the transfer of an honest Judge. The functioning of the Chandigarh Bench of the AFT has already been stifled by not providing enough critical staff for its day-to-day functioning, holding back the allowances of the hardworking staff, burdening them with financial recoveries and also not providing proper infrastructure to the Members, including security, support staff and housing.

The Learned AG also made an off-the-cuff remark questioning as to how the Bar Association is interested in the matter. The unfortunate state of affairs has unnecessarily brought the entire issue into controversy, whereas the matter, at its start was very simple, that is, the non-compliance of judicial orders of the AFT by the MoD. May we remind the Learned AG that it is lawyers and the Bar which have historically taken a stand to protect judicial institutions and their independence. We must also not forget the stellar role played by the *Madras Bar Association* in recent times on the subject of tribunalisation, including the setting-up of the entire 'National Tax Tribunal' being quashed by a Constitution Bench.

This country, this system, this democracy has much to thank to our soldiers. This Bar Association, like many other apolitical and objective organisations and citizens, would not remain a mute spectator even if we have to make a million efforts, and would come to the aid of not only the soldiers and other pensioners whose dignity is at stake, but will also not cover down or be overwhelmed by such demeaning statements, even if these are made by the senior-most law officer of this country, albeit on being briefed incorrectly, or any other person, howsoever high he or she might be, since we would be failing in our legal duty towards litigants, independence of judicial institutions, the country and the society if we bow down to anything other than the Constitution of India.

Jai Hind.


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