**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 2275 OF 2019**

**PANI RAM** **...APPELLANT**

**VERSUS**

**UNION OF INDIA AND ORS.** **...RESPONDENTS**

**J U D G M E N T**

**B.R. GAVAI, J.**

**1.** The appeal challenges the judgment and order dated 10th October 2018 passed by the Armed Forces Tribunal, Regional Bench, Lucknow (hereinafter referred to as "AFT"), vide which the O.A. No. 149 of 2018 filed by the appellant for grant of disability pension came to be dismissed. The appellant also challenges the order dated 31st October 2018 passed in M.A. No. 1839 of 2018 in O.A. No. 149 of 2018, vide which though, the application for leave to appeal was allowed, but the AFT framed a different question of law.

**2.** The facts in brief giving rise to the present appeal are as under:

After serving for about 25 years in Infantry of the Regular Army, the appellant got re-enrolled in the Territorial Army as a full-time soldier on 1st August 2007. While serving in Territorial Army, on 5th April 2009, the appellant was granted 10 days' part of annual leave from 15th April 2009 to 24th April 2009, to proceed to his home, which was at a distance of few kilometers from the Unit where he was posted. After availing the said leave, when the appellant was coming back on his scooter to rejoin his duty, on 24th April 2009, he met with a serious accident. Initially, the appellant was admitted to the District Hospital, Pithoragarh from where he was shifted to the 161 Military Hospital at Pithoragarh. On 25th April 2009, the appellant was evacuated by helicopter to the Base Hospital at Lucknow, where his right leg was amputated up to the knee. Thereafter, he was shifted to the Artificial Limb Centre (hereinafter referred to as 'ALC') at Pune. On 14th September 2009, he was discharged from ALC and was granted 28 days' sick leave with the

instruction to report back to the ALC. After the expiry of sick leave, he was re-admitted to ALC on 11th October 2009. On 21st October 2009, the Medical Board was held at ALC which assessed the appellant's disability to be 80%. However, it could not give any opinion about the attributability aspect of the injury. On 07th November 2009, the appellant was discharged from ALC with instruction to report back to his Unit.

**3.** As per Regulation No. 520 of the Regulations for the Army, 1987, a Court of Inquiry (hereinafter referred to as "CoI"), was held from 13th November 2009 onwards to investigate into the circumstances under which the appellant had sustained injury. The CoI found that the injury sustained by the appellant was attributable to military service and it was not due to his own negligence. The said finding of CoI was duly approved by the Station Commander - Respondent No. 3, on 11th January 2010. On 25th October 2010, a re-categorization Medical Board was held at ALC, which maintained appellant's disability at 80% and declared it as attributable to military service. Subsequently, on the

basis of the opinion of the Invaliding Medical Board (hereinafter referred to as 'IMB'), on 1st January 2012, the appellant was invalided out of service with 80% disability which was attributable to military service.

**4.** The appellant, therefore, approached AFT for grant of disability pension as is applicable to the personnel of Regular Army, in accordance with Regulation No. 292 of the Pension Regulations for the Army, 1961. The claim of the appellant was resisted by the respondents on the ground that the appellant, after discharging from mechanized infantry as a pensioner, was re-enrolled in 130 Infantry Battalion (Territorial Army), Ecological Task Force, Kumaon, on 1st August 2007 as an Ex-Serviceman (ESM). The claim of the appellant has been denied by the respondents on the ground that the appellant was not entitled to any pensionary benefits in view of the letter of the Government of India, Ministry of Defence, dated 31st March 2008.

**5.** The AFT though held, that the injury sustained by the appellant which resulted into 80% disability was found by the competent authority to be aggravated and attributable to

the military service, rejected the claim of the appellant on the ground that a separate scheme and service conditions have been created for the Members of Ecological Task Force (hereinafter referred to as 'ETF'), which was accepted by the appellant and as such, he was not entitled to disability pension.

**6.** The appellant thereafter filed M.A. No. 1839 of 2018 in O.A. No. 149 of 2018 for grant of leave to appeal against the judgment and order dated 10th October 2018, wherein the appellant had framed the following question of law of general public importance:

> "Whether the terms and conditions of service of a member of the Territorial Army (TA) during the period of his embodiment with the T.A. will be governed by the statutory rules which provide for grant of 'disability pension' or by the departmental orders which deny the grant of the disability pension to the members of a particular unit of the T.A. to which such individual belongs."

**7.** The AFT vide order dated 31st October 2018 though, allowed the application for grant of leave to appeal, framed a different question of law, as under:

> "Whether the members of Ecological Task Force of Territorial Army are entitled to pensionary benefits

> at par with the members of regular Army in spite of the aforementioned MOD letter dated 31.03.2008 whereby pensionary benefits have been denied."

**8.** The said order dated 31st October 2018, passed by AFT is also a subject matter of challenge in the present appeal.

**9.** We have heard Shri Siddhartha Iyer, learned Counsel appearing on behalf of the appellant and Shri Vikramjit Banerjee, learned Additional Solicitor General, appearing on behalf of the respondent-Union of India.

**10.** It is the specific case of respondent-Union of India that separate terms and conditions were provided by it vide communication dated 31st March 2008, which provides that the members of ETF would not be entitled for disability pension. Vide the said communication, the Government of India has communicated to the Chief of Army Staff, the sanction of the President of India for raising two additional companies for 130 Infantry Battalion (Territorial Army) Ecological under Rule 33 of Territorial Army Act, Rules 1948.

**11.** The respondents rely on Clause (iv) of Sub-Para (d) of Para 1 of the said communication dated 31st March 2008 :

> "(iv) Pension entitlement of Territorial Army personnel earned for the earlier regular Army Service, will remain untouched and will be ignored in fixing their pay and allowances."

**12.** The respondents also rely on a document titled "Certificate" dated 30th August 2007, signed by the appellant wherein under condition (f), it is stated thus :

> "(f) That, I will not be getting any enhance pension for having been enrolled in this force."

**13.** It will be relevant to refer to sub-section (1) of Section 9 of the Territorial Army Act, 1948 :

> **"Sec. 9. Application of the Army Act, 1950.**
> (1) Every officer, when doing duty as such officer, and every enrolled person when called out or embodied or attached to the Regular Army], shall, subject to such adaptations and modifications as may be made therein by the Central Government by notification in the Official Gazette, be subject to the provisions of the Army Act, 1950, and the rules or regulations made thereunder in the same manner and to the same extent as if such officer or enrolled person held the same rank in the Regular Army as he holds for the time being in the Territorial Army .."

**14.** It could thus be seen that every such officer or enrolled person in Territorial Army when holds the rank, shall be subject to the provisions of Army Act, 1950 and the rules or

regulations made thereunder, equivalent to the same rank in the Regular Army.

**15.** Chapter 5 of the Pension Regulations for the Army, 1961 deals with Territorial Army. The Regulation No. 292 of the Pension Regulations for the Army, 1961 read thus:

> **"292.** The grant of pensionary awards to the members of the Territorial Army shall be governed by the same general regulations as are applicable to the corresponding personnel of the Army except where they are inconsistent with the provisions of regulations in this Chapter"

**16.** It could thus be seen that the grant of pensionary awards to the members of the Territorial Army shall be governed by the same rules and regulations as are applicable to the corresponding persons of the Army except where they are inconsistent with the provisions of regulations in the said chapter.

**17.** Chapter 3 of the Pension Regulations for the Army, 1961, deals with Disability Pensionary Awards, in which Regulation No. 173 reads thus:

> "**173. Primary Conditions for the grant of Disability Pension**

> Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 per cent or over."

**18.** The perusal thereof will reveal that an individual who is invalided out of service on account of disability, which is attributable or aggravated by Military Service in non-battle casualty and is assessed 20% or more, would be entitled to disability pension. The respondents are not in a position to point out any rules or regulations, which can be said to be inconsistent with Regulation No. 292 or 173, neither has any other regulation been pointed out, which deals with the terms and conditions of service of ETF.

**19.** The communication of the Union of India dated 31st March 2008, vide which the President of India has granted sanction, itself reveals that the sanction is for raising two additional companies for 130 Infantry Battalion (Territorial Army) Ecological.

**20.** It is thus clear that the ETF is established as an additional company for 130 Infantry Battalion of Territorial Army. It is not in dispute that the other officers or enrolled persons working in the Territorial Army are entitled to disability pension under Regulation No. 173 read with Regulation No. 292 of Pension Regulations for the Army, 1961. When the appellant is enrolled as a member of ETF which is a company for 130 Infantry Battalion (Territorial Army), we see no reason as to why the appellant was denied the disability pension. Specifically so, when the Medical Board and COI have found that the injury sustained by the appellant was attributable to the Military Service and it was not due to his own negligence.

**21.** In case of conflict between what is stated in internal communication between the two organs of the State and the Statutory Rules and Regulations, it is needless to state that the Statutory Rules and Regulations would prevail. In that view of the matter, we find that AFT was not justified in rejecting the claim of the appellant.

**22.** The respondents have heavily relied on the document dated 30th August 2007, titled "Certificate". No doubt that the said document is signed by the appellant, wherein he had agreed to the condition that he will not be getting any enhanced pension for having been enrolled in this force. Firstly, we find that the said document deals with enhanced pension and not disability pension. As already discussed hereinabove, a conjoint reading of Section 9 of the Territorial Army Act, 1948 and Regulation Nos. 292 and 173 of the Pension Regulations for the Army, 1961, would show that a member of the Territorial Army would be entitled to disability pension. In any case, in this respect, even accepting that the appellant has signed such a document, it will be relevant to refer to the following observations of this Court in the case of ***Central Inland Water Transport Corporation Limited and Another v. Brojo Nath Ganguly and Another***[1] :

> "**89.** .....We have a Constitution for our country. Our judges are bound by their oath to "uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality

1 **(1986) 3 SCC 156**

before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infrastructural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce,

> there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances."

**23.** As held by this Court, a Right to Equality guaranteed under Article 14 of the Constitution of India would also apply to a man who has no choice or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. We find that the said observations rightly apply to the facts of the present case. Can it be said that the mighty Union of India and an ordinary soldier, who having fought for the country and retired from Regular Army, seeking re-employment in the Territorial Army, have an equal bargaining power. We are therefore of the considered view that the reliance placed on the said document would also be of no assistance to the case of the respondents.

**24.** The present appeal is therefore allowed and the judgment and order dated 10th October, 2018 passed by AFT in O.A. No. 149 of 2018 is quashed and set aside. The question of law framed by AFT in its order dated 31st October 2018, already stands answered in view of our finding given in para (21).

**25.** The respondents herein are directed to grant disability pension to the appellant in accordance with the rules and regulations as are applicable to the Members of the Territorial Army with effect from 1st January 2012. The respondents are directed to clear arrears from 1st January 2012 within a period of three months from the date of this judgment with interest at the rate of 9% per annum.

**26.** The appeal is allowed in the above terms. All pending applications shall stand disposed of. No order as to costs.

**.....J.**
**[L. NAGESWARA RAO]**

**.....J.**
**[B.R. GAVAI]**

**NEW DELHI;**
**DECEMBER 17, 2021.**