



[2022] 1 F.C.R. D-18

ARMED FORCES

Pensions — Judicial review of decision of Canadian Forces Grievance Authority, Final Authority (FA) rejecting grievance filed by applicant under *National Defence Act*, R.S.C., 1985, c. N-5 — Applicant member of Canadian Armed Forces (CAF) for approximately 30 years — Suffered number of service-related medical issues during operational tours, special operations — Received various allowances from CAF throughout his service including Level 3 Special Operations Allowance (SOA) — Notification of Change of Medical Employment Limitations (MEL) approved in 2017, concluding that applicant had employment limitations due to medical condition — As result of MEL, applicant received series of notices indicating loss of some allowances, including Level 3 SOA — Applicant sought repayment of amounts clawed back by CAF, reinstatement of Level 3 SOA, other allowances, written assurances he would not lose allowances due to medical release — Acting Director General Compensation and Benefits, acting as Initial Authority (IA), granted grievance in part, granting applicant Level 2 SOA — Newly appointed Director General Compensation and Benefits partly rescinded IA decision — Concluded applicant disentitled to Level 2 SOA as of August 1, 2017, CAF ethically bound to recover overpayment of SOA — Applicant grieved that decision — Military Grievance External Review Committee (MGERC) concluded that applicant disentitled to Level 2 SOA as of August 30, 2017, but recommended that he be entitled to Level 2 SOA until that date — FA agreed with MGERC, found applicant entitled to be repaid amount of Level 2 SOA for period between August 1 to 30, 2017, but not entitled to Level 2 SOA from September 1, 2017 onwards — Respondent conceding that decision unreasonable because reasons provided by FA insufficient — Further issues raised herein whether IA having jurisdiction to reconsider IA decision, whether FA having jurisdiction to make its decision — Whether decision should be remitted back for redetermination by FA if found unreasonable — Respondent asserting, *inter alia*, that IA had jurisdiction to rescind IA decision in order to correct error in that decision; that IA not *functus officio* when rendering decision; that statutory framework, public interest favouring ability of IA to correct overpayment to CAF member — Issue of whether IA had jurisdiction to rescind IA decision significantly intertwined with issue of applicant's entitlement to Level 2 SOA, which was not fully considered by FA in its decision in view of failure of FA to deal with all of applicant's evidence, arguments — Doctrine of *functus officio* holding that tribunal having reached final decision in respect of matter cannot revisit that decision because error later discovered, unless error minor — In applying doctrine, unfairness to individual in reopening final decision having to be weighed against harm that might result if administrative decision maker were prevented from fulfilling its mandate — Discretion to decide this issue not exercised herein — Rather, issue of whether IA had jurisdiction to rescind IA decision should be considered by FA with benefit of its full consideration of entitlement issue, its expertise as to underlying statutory scheme — In view of respondent's concession that FA's decision unreasonable, parties agreeing that decision should be quashed — When matter quashed, general rule being that it should be remitted to decision maker for redetermination subject to limited exceptions — No exceptions applying here — Doctrine of estoppel not applying in this context to force directed verdict, particularly in view of finding on first issue — FA having sufficient guidance to redetermine grievance in fair, balanced manner to parties, in manner fully addressing estoppel argument in context of statutory analysis required to consider substance of grievance — Decision of FA quashed — Matter remitted back to FA for redetermination — Application allowed.

INNES V. CANADA (ATTORNEY GENERAL) (T-720-21, 2022 FC 1717, Furlanetto J., reasons for judgment dated December 14, 2022, 16 pp.)