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HIGH COURT OF DELHI AT NEW DELHI

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WP(C) 1210/2003

BRIG.V.K.ANAND

Petitioner

Through Mr.Sandeep Sethi, Sr.Advocate with
Mr. S.M.Dalal, Advocate

VERSUS

UNION OF INDIA & ORS.

.... Respondents.

Through Ms.Anjana Gosain, Advocate for
UOI

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE S.MURALIDHAR

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

ORDER
20-02-2009

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Vide order dated 21st October 2003, a Division Bench comprising B.A.Khan and B.N.Chaturvedi, JJ., made a reference to a third Judge on the following issue:

“Whether the petitioner’s trial by GCM was time-barred or not in the facts and circumstances of the case and in the light of the Rule position ?”

The issue of interpretation of Section 122 of the Army Act fell for consideration of the Division Bench. Difference of opinion had arisen on the issue whether the petitioner’s trial by GCM was time-barred. B.A.Khan, J has held that the trial as time-barred whereas B.N.Chaturvedi, J has held that it was within time. The matter was accordingly referred to third Judge in accordance with Clause 26 of the Letters Patent.

Justice P.N.Nandrajog who heard the reference, felt that the reference as framed require appreciation of facts and circumstances of the case and the counsel for the respondent was handicapped in making submission if it was to be understood that the opinion of the third Judge has to be one of the two views taken by B.A.Khan, J and B.N.Chaturvedi, J. According to the

learned Judge possibility of a third view emerging was surfacing during the arguments. Therefore the learned judge opined that the matter needs to be heard and decided by a Full Bench and directed the Registry to place the papers before the learned Chief Justice for constitution of a Full Bench.

We are unable to agree with the view taken by the learned Judge. When the two judges decided the writ petition under Article 226, which is in the nature of original proceedings, differed on a question of fact or law, reference to a third Judge as contemplated is required to be made for disposal of the matter as per the majority opinion of the three judges. (See: ***Reliance Industries Limited v. Praveenbhai Jasbhai Patel*** AIR 1997 SC 3892). The issue referred to the third Judge is whether the petitioner's trial by GCM was time-barred or not. While deciding this issue the line of reasoning which may be adopted by the third Judge may not be the same as adopted by either of the learned Judges who made the reference. But that cannot be a reason for making a reference to a Full Bench. We are afraid such a course is not permissible under the Rules. We, therefore, remit the matter back to the learned single Judge with a request to decide the reference expeditiously.

CHIEF JUSTICE

S.MURALIDHAR, J

SUDERSHAN KUMAR MISRA,J

FEBRUARY 20, 2009
"v"