

Regular S. No. 9

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

WP(C) 2370/2025 CM(6258/2025)

Major Wasif Majied Tak

... Petitioner/Appellant(s)

Through: Mr. I. A. Parray, Advocate

V/s

Union of India and others

... Respondent(s)

Through: Mr. Faizan Ahmad, CGC

CORAM: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
06-10-2025

1. In the instant petition filed under Article 226 of the Constitution, the petitioner herein has sought following reliefs:

a) Issue a Writ of Mandamus or any other appropriate writ, directing the Respondents to grant the Petitioner, Major Wasif Majied Tak, Annual leave for 01 month to travel to Anantnag, Jammu and Srinagar to attend the court hearings in the Court of Munsiff/Judicial Magistrate, Anantnag, and the District Court, Anantnag, Addl Principal Judge (Family Court) Jammu and Hon'ble High Court of J&K at Srinagar compliance with the judicial summons.

b) Issue a Writ commanding/directing the respondents to allow the petitioner means to dignified life concerning petitioners living conditions.

c) Restrain the Respondents from imposing any further arbitrary restrictions that prevent the Petitioner from attending his legal proceedings, in accordance with his rights under the Army Act and the Constitution of India.

d) Allow petitioner his due leave so as to visit his family, ailing father.

e) Pass any other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

2. The petitioner has stated in the petition that he has been attached on account of disciplinary proceedings initiated against him by the respondents under the Provisions of Army Act, 1950 and the Rules framed thereunder, besides placing him under suspension and imposing

restrictions akin to open arrest, confining the petitioner to the barracks and camp perimeter, thus curtailing his movement and ability to travel.

3. It is further stated that the petitioner submitted a leave application to the respondent 5 on 27.5.2025, 29.5.2025, and 31.5.2025 for enabling him to attend the court cases pending before the Court of Munsiff/Judicial Magistrate, Anantnag and District Court Anantnag, however, despite submitting the said leave application, the respondent 5 consistently denied the grant of leave to him without any reasons necessitating the filing of the instant petition.

Heard learned counsel for the parties and perused the record.

4. Perusal of the record reveals that the petitioner indisputably is a member of Armed Forces (Army) holding the rank of Major and is admittedly subject to the provisions of the Army Act, 1950 and Rules made thereunder. Thus, being an army personnel and subject to the Army Act, 1950, the provisions of Armed Forces Tribunal Act, 2007 occupy the field whereby under section 2, the said Act has been made applicable to the persons subject to the Army Act, 1950, Navy Act, 1957 and Air Forces Act, 1950 qua the “service matters”.
5. In relation to the persons subject to the Army Act 1950, Section 3 clause (o) provides as under:

(o) "service matters", in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), mean all matters relating to the conditions of their service and shall include-

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions;

(iii) summary disposal and trials where the punishment of dismissal is awarded;

(iv) any other matter, whatsoever, but shall not include matters relating to-

6. Since the Apex Court in case titled as “**Union of India vs. Shri Kant Sharma (2015) 6 SCC 773** has specifically provided that High Court

should refrain from entertaining petitions under Article 226 if alternative or effective remedy is available, besides providing that the object of the Armed Forces Tribunal Act 2007 is to provide for adjudication or trial by the Armed Forces Tribunal of disputes and complaints with respect to commission, appointments, enrolment and conditions of service in respect of persons subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950 and also provides for appeals arising out of orders, findings or sentences of Courts-Martial held under the said Acts and for matters connected therewith or incidental thereto, this court thus is not inclined to display indulgence and exercise discretion enshrined under Article 226 of the Constitution in the instant mater.

7. Accordingly, the petition is ordered to be returned back to the petitioner to be presented/filed before the Tribunal in accordance with law provided there is no legal impediment thereto.
8. Registry shall carry out the aforesaid direction and return the petition to the petitioner in accordance with the applicable rules.

Srinagar
06-10-2025
N Ahmad

(JAVED IQBAL WANI)
JUDGE