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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CNR No. DLHC010387012026

+ **W.P.(C) 12024/2026 & CM APPL. 55738/2026 – STAY**

LT COL BIBEK CHAKROBORTY (IC-63112P) Petitioner

Through: Counsel appearance not given.

versus

UNION OF INDIA

.....Respondent

**Through: Mr. Amit Tiwari, CGSC with Ms. Ayushi Srivastava, Mr. Arpan Narwal, Mr. Kushagra Malik and Mr. Ujjwal Tyagi, Advocates.
Mr. Vedansh Anand, SPC with Mr. Shivam Kumar, GP.
Mr. Vinay Kaushik, Government Pleader.
Major Anish Muralidhar and Capt Himanshu Tyagi, Army.**

CORAM:

HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

% **19.08.2026**

1. The present petition has been filed under Article 226 of the Constitution of India, seeking an ad-interim stay of the General Court Martial (GCM) proceedings scheduled to assemble on 20th August, 2026.
2. In response to the preliminary objections raised by learned counsel for the respondent, as regard to the availability of alternate remedy before the Armed Forces Tribunal, learned counsel for the petitioner has submitted that the petition before this Court, in exercise of its powers under Article 226 of



the Constitution of India, is maintainable, as: (a) the fundamental rights of the petitioner are violated, as the petitioner has the right to claim equality before the law; and (b) in view of the statutory mandate provided under Section 122 of the Army Act, the proceedings are barred by limitation and, as such, the respondent has no authority in law to continue with the proceedings, as the same would be without jurisdiction. To substantiate the aforesaid contention, specific reliance has been placed on the judgment in the matter of Union of India v. Parashotam Dass, [2023] 3 S.C.R. 598, more particularly, paragraph 29 thereof, which reads as under:-

“29. We believe that there is no necessity to carve out certain cases from the scope of judicial review under Article 226 of the Constitution, as was suggested by the learned Additional Solicitor General. It was enunciated in the Constitution Bench judgment in S.N. Mukherjee case that even in respect of courts-martial, the High Court could grant appropriate relief in a certain scenario as envisaged therein. i.e. "if the said proceedings have resulted in denial of the fundamental rights guaranteed under Part III of the Constitution or if the said proceedings suffer from a jurisdictional error or any error of law apparent on the face of the record."”

3. As against above, learned counsel appearing on behalf of the respondent submits that a perusal of the charge-sheet shows that the offence came to the knowledge of the competent authority on 28th August, 2023. Drawing support from the clause (a) of Section 122 (1) of the Army Act, 1950, it is urged that the period of 3 years has to be reckoned from the said date and, as such, the proceedings are within limitation. It is further urged that, in that way of the matter, the proceedings can be continued against the petitioner and, as regards the violation of fundamental rights, as claimed, can also be looked into by the Tribunal.



4. Learned counsel for the petitioner has invited our attention to the order of suspension dated 7th November, 2022, and also the review order of suspension dated 4th February, 2023, so as to urge that the knowledge of alleged offence was within the ambit of the respondent, as the material therein reflects that identical material was relied upon for the suspension. Further reliance is placed on the judgement of the Hon'ble Apex Court in the matter of Colonel Anil Kumar Gupta versus Union of India and Others [2022] 9 S.C.R. 700, particularly paragraph 8 and 9, as such to urge that the present writ petition is maintainable.

5. We are required to deal with the aforesaid contention of the petitioner in the light of the judgement of the Hon'ble Apex Court in the matter of Colonel Anil Kumar Gupta versus Union of India and Others [2022] 9 S.C.R. 700. In the said matter, the appellant/petitioner therein had approached the Armed Forces Tribunal and thereafter the petitioner approached the Hon'ble Apex Court. Here, in this case, as regards to the suspension order is concerned, it does not indicate as to whether the material referred to in the suspension order dated 7th November, 2022, or that of 4th February, 2023, is identical or similar to the material referred to in the charge-sheet, wherein it is specifically mentioned that the knowledge of alleged offence was acquired on 28th August, 2023. As such, the contention of the petitioner that the charge-sheet or the Court Martial proceedings are hit by section 122 of the Army Act, 1950, cannot be inferred at this stage of the proceedings as being barred by limitation.

6. Having looked into the said aspect of the matter, we find from the chargesheet, which has formed basis for demonstrating cause of action in the present petition, that the knowledge of the alleged offence against the



petitioner, as contemplated under Section 122 of the Army Act, 1950, to the respondent is reckoned from 28th August, 2023. That being so, it cannot be said, at this stage, that the proceedings taken out against the petitioner are beyond the period of limitation.

7. As regards the violation of fundamental rights, seeking equality before the law, the said aspect can definitely be gone into by the Tribunal. As such, without commenting anything upon the merits of the matter, we deem it appropriate to dispose of the petition by granting the petitioner liberty to take recourse to the remedy before the Armed Forces Tribunal in view of Section 15 of the Armed Forces Tribunal Act.

8. Pending application(s), if any, also stand disposed of.

9. Order be uploaded on the website of this Court, *forthwith*.

NITIN WASUDEO SAMBRE, J

AMIT SHARMA, J

AUGUST 19, 2026/sn/ah