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

+ W.P.(C) 1141/2014

UMESH RAY

..... Petitioner

Through : Mr. K. Singhal, Advocate

versus

UNION OF INDIA & ORS

..... Respondents

Through : Mr. Ankur Chibber, Advocate

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

% **12.05.2016**

1. On 30th March, 2016, counsel for the respondents had drawn our attention to the exclusion clause of Section 3 (o) of the Armed Forces Tribunal Act, 2007, which defines “service matters” in relation to the Army Act, the Navy Act and the Air Force Act, relating to Summary Court Martial and requested that the present case may be adjourned to enable him to produce a copy of the judgment of the AFT that has held that matters in relation to the Summary Court Martials, which have been excluded under the aforesaid exclusion clause, would be entertained by the AFT. He had further stated that the aforesaid order of the AFT was upheld by the Supreme

Court, vide order dated 15th December, 2015, passed in **Criminal Appeal No(s). 948/2010**, entitled Union of India and Ors. v. Akhilesh Kumar Tiwari.

2. The aforesaid submission is reiterated by counsel for the respondents today. He states that a similar view has been taken by two Division Benches, one in the judgment dated 20.2.2014, pronounced by the Lucknow Bench, High Court of Allahabad in **Service Bench No.8051/1998** entitled 'Major Kunwar Ambreshwar Singh vs. UOI' and the other vide judgment dated 14.12.2010, pronounced by a Division Bench of High Court of Uttarakhand in **WP(C)No.756 (PIL) of 2008** entitled 'Lalit Kumar vs. UOI & Anr.'.

3. Copies of the aforesaid judgments have been handed over to the counsel for the petitioner, who submits that he does not have any objection to the present petition being transmitted to the AFT for adjudication, but in that event, he may not be bound down to his statement recorded in the order dated 4.3.2016, to the effect that the petitioner seeks to confine the relief in the present petition to the proportionality of the sentence awarded to him, which is for reduction of rank from Havaldar to Sepoy. Instead, the petitioner may be permitted to take all the pleas that may be available to him before the AFT as set out in the writ petition, except for prayer (d) of the prayer clause, which is for declaring Section 3(o)(iii) of the AFT Act as ultra vires.

4. Counsel for the respondent is agreeable to the said request.

5. In view of the aforesaid submission, the file of the present case be transmitted by the Registry to the AFT (Principal Bench), to be placed before the Registrar on 11th July, 2016, for further proceedings. The petitioner shall be at liberty to address arguments on all aspects raised in the petition. In view of the fact that the present petition was at the stage of final arguments, the AFT is requested to make an endeavour to expedite the hearing.

HIMA KOHLI, J

SUNIL GAUR, J

MAY 12, 2016
sk/rkb

