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

+ **W.P.(C) 802/2016 & CMs No.3490-91/2016**

Decided on : 01.02.2016

IN THE MATTER OF:

NABIN KISHOR CHOUHAN

..... Petitioner

Through : Mr. Rajinder Kumar, Advocate

versus

UNION OF INDIA AND ORS

..... Respondents

Through : Mr. Vikas Mahajan, CGSC with
Mr. Rohan Gupta, Advocate

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUNIL GAUR

HIMA KOHLI, J. (Oral)

1. The present petition has been filed by the petitioner assailing the order dated 6.1.2016 passed by the respondent No.2/Director General, SSB (Appellate Authority), duly communicated to the petitioner by the respondent No.4/Commandant based at Darjeeling, West Bengal, rejecting his request submitted vide application dated 26.11.2015 for suspending his sentence to enable him to exercise his statutory right of filing an appeal.

2. Learned counsel for the petitioner submits that vide order dated 19.11.2015 passed by the respondent No.4 (Disciplinary Authority), the petitioner was tried by a Summary Force Court and has been

found guilty on the charge of Section 13(1) of the Prevention of Corruption Act, 1988 and under Section 43 of the SSB Act, 2007, and awarded a punishment of rigorous imprisonment for one year in civil prison and for dismissal from service under Section 51(1)(b)(c) of SSB Act, 2007.

3. In terms of the aforesaid order, the petitioner was placed in imprisonment on 22.11.2015. While in jail, the petitioner had forwarded a representation dated 26.11.2015 asking for suspension of sentence of his imprisonment under Section 144 read with Section 145 (2) of the SSB Act, 2007, which has been rejected by the respondent No.2 (Appellate Authority), vide Memorandum dated 6.1.2016.

4. It is pertinent to note that this is the second writ petition filed by the petitioner in this Court. The first petition filed for the same relief, registered as W.P.(C) No. 260/2016 was dismissed as withdrawn vide order dated 12.1.2016, with liberty granted to the petitioner to approach the respondent No.3/IG to seek suspension of his sentence to enable him to file an appeal in terms of the SSB Act and Rules, within two week. Within one week from the date of passing of the said order, the present petition has been filed in this Court.

5. It has been enquired from learned counsel for the petitioner as to why would the present petition be maintainable when liberty has

already been granted to the petitioner in terms of the order dated 12.1.2016. In reply, counsel for the petitioner submits that on 12.1.2016, the petitioner was unaware of the fact that an order dated 6.1.2016 had been passed by the respondent No.2 rejecting his request for suspension of the imprisonment. It is submitted that the aforesaid order passed by the respondent No.2 was communicated to the petitioner by the respondent No.4 under cover of letter dated 8.1.2016 received on 14.1.2016, whereafter, the present petition has been filed.

6. Counsel for the respondents, who appears on advance notice, opposes the present petition on the ground that a glance at Section 144 of the SSB Act that refers to suspension of sentence of imprisonment reveals that it is not mandatory, but only directory in nature and it is the discretion of the competent authority whether to suspend the sentence or not. He states that once the Director General, SSB had exercised such a power by passing a reasoned order, it is not open to judicial review. He further states that in any case, the petitioner has not taken any steps to file a statutory appeal, though the entire records were admittedly made available to him on 23.12.2015, while in jail. He adds that the respondents are ready and willing to give the counsel engaged by the petitioner access to him in

jail for consultation for purposes of drafting the statutory appeal. Lastly, counsel for the respondents states that the respondents have an apprehension that if the sentence of the petitioner is suspended, he is likely to abscond.

7. Having regard to the submission made by the counsel for the respondents, we are not inclined to entertain the present petition for suspension of sentence of imprisonment. However, the petitioner shall be entitled to obtain legal advise for drafting a statutory appeal for which the respondents shall give access to the lawyer engaged by him, as and when requested.

8. The petitioner shall be at liberty to file a statutory appeal within the stipulated timeline. Once the appeal is filed, the same shall be considered by the Appellate Authority in accordance with law and disposed of, under written intimation to the petitioner.

9. The writ petition is disposed of, along with the pending applications.

(HIMA KOHLI)
JUDGE

(SUNIL GAUR)
JUDGE

FEBRUARY 01, 2016/sk/ap