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

+ W.P.(C) 1158/2010

NK SATENDRA SINGH NO.3188755P

..... Petitioner

Represented by: Mr.D.S.Kauntae, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Represented by: Mr.A.K.Gautam, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MS. JUSTICE PRATIBHA RANI**

**ORDER**

% **20.07.2016**

W.P.(C) No.1158/2010 & CM No.1502/2016

1. Vide CM No.1502/2016 the petitioner prays that the writ petition be transmitted to the Principal Bench of the Armed Forces Tribunal New Delhi for adjudication because the subject matter of the writ petition has to be heard by the Armed Forces Tribunal.

2. We are not only inclined to dismiss CM No.1502/2016 but even the writ petition. Our reasons for the same.

3. Tried at a summary court martial and found guilty, resulting in penalty to be reduced in rank and to suffer rigorous imprisonment for three years being inflicted and its consequence being the petitioner being discharged from service, led the petitioner to file W.P.(C) No.6034/2007 in this Court. In the writ petition he not only challenged the penalty levied on January 03, 2006 but even the order of discharge dated August 01, 2007.

4. With the constitution of the Armed Forces Tribunal the said writ

petition was transferred to the Armed Forces Tribunal on December 07, 2009. Arguing the writ petition which was transferred to the Armed Forces Tribunal, on February 15, 2010 the petitioner gave up challenge to the verdict of guilt and penalty levied at the summary court martial on January 03, 2006. He restricted arguments to the petitioner being discharged from service.

5. The petitioner thereafter filed the instant writ petition challenging the penalty imposed on January 03, 2006.

6. In the instant writ petition the petitioner has not disclosed that in W.P.(C) No.6034/2007 he had challenged the penalty imposed at the summary court martial. Petitioner has not disclosed that on February 15, 2010 he had given up said challenge before the Armed Forces Tribunal where W.P.(C) No.6034/2007 was renumbered as TA No.491/2010. We find that a false averment has been made in para 2 of the instant writ petition that the Armed Forces Tribunal declined to adjudicate on the penalty inflicted upon the petitioner at the summary court martial. The order dated February 15, 2010 passed by the Armed Forces Tribunal has not even been referred to by the petitioner. The order reads as under:-

“ORDER

*Dated : 15.02.2010*

*Present : Mr.D.S.Kauntae, Advocate for the Petitioner  
Mr.Anil Gautam, Advocate with Lt.Col.Naveen  
Sharma for the respondents.*

*This petition is confined with regard to the discharged pursuant to show cause notice under Rule 13(3)(v) of the Army Rules. It is said that in response to the show cause notice, reply was given by the petitioner. But without any application of mind, movement order was given to the petitioner. Counsel for the respondents seeks time to furnish the factual aspects, including the order, if any,*

*passed by Brigade Commander.*

*List the matter on 8.4.2010.”*

7. Under the circumstances we hold that once the petitioner gave up challenge to the penalty inflicted post verdict of guilt being returned at the summary court martial he cannot challenge the same by filing a petition in this Court and then praying to this Court that the petition should be transferred to the Armed Forces Tribunal.

8. Learned counsel for the petitioner states that the petitioner was wrongly advised to give up challenge to the penalty imposed at the summary court martial. If this be so, the petitioner has to file an application before the Armed Forces Tribunal in TA No.491/2010 praying that the concession given by the counsel was wrong and that the petitioner should be permitted to challenge the penalty imposed.

9. Interestingly we find that Mr.D.S.Kauntae was the counsel for the petitioner when the earlier writ petition was filed. He was the counsel when the order dated February 15, 2010 was passed. He is the counsel who has filed the instant writ petition.

10. We speak no more.

11. The writ petition and CM No.1502/2016 are dismissed.

12. No costs.

**PRADEEP NANDRAJOG, J.**

**PRATIBHA RANI, J.**

**JULY 20, 2016**

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