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

+ **W.P.(C) 3011/2016 & C.M. No. 12632/2016**

SUBEDAR MAJOR MOTIRAM

..... Petitioner

Through: Mr. Jagdish Rajput and
Mr. Subhash Bahgel, Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Vivek Goyal, Advocate.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

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05.04.2016

1. The present petition has been filed by the petitioner who had retired from the Indian Army on the post of a Subedar Major on 31.8.2002, praying *inter alia* for directions to the respondents to award him honorary commission to the rank of a lieutenant.
2. It is pertinent to note that the present petition has been listed by the Registry subject to an office objection with regard to its maintainability in this Court when the remedy of the petitioner lies before the Armed Forces Tribunal (in short 'AFT').
3. Learned counsel for the petitioner contends that the petitioner has laid a challenge to the policy followed by the Indian Army which can only be examined in a writ proceeding.

4. On a perusal of the prayers set out at pages 16-17 of the petition, it transpires that no such challenge has been laid by the petitioner.
5. On asking learned counsel for the petitioner to point out the policy which the petitioner has assailed, he submits that the petitioner is aggrieved by a communication dated 02.3.2015, issued by the respondent No.2. Interestingly, even the said communication is not on record.
6. Counsel for the petitioner proceeds to submit that the petitioner has withdrawn O.A. NO. 419/2013 filed by him before the AFT, Principal Bench, New Delhi, wherein similar relief was prayed for, with liberty to file a fresh petition challenging the policy dated 2.3.2015. However, a perusal of the order dated 12.3.2015 passed by the AFT and enclosed with the present petition as Annexure-13, reveals that petitioner had not clarified before the AFT that he proposes to file a writ petition to lay a challenge to the said policy. In any event, as noted above the petitioner has elected not to assail any policy in the present petition, as is evident from the prayer clause.
7. In view of the definition of “service matters” prescribed in Section 3(o) of the AFT Act, 2007, the present petition is dismissed as not maintainable before the High Court, along with the pending applications.

HIMA KOHLI, J

SUNIL GAUR, J

APRIL 05, 2016

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