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

+ W.P.(C) 12314/2015

CHAND KUMAR

..... Petitioner

Through Mr. L.B.Rai and Mr.Mohit Kumar
Sharma, Advocates

versus

UNION OF INDIA & ANR

..... Respondents

Through Ms. Barkha Babbar, Advocate for UOI

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

ORDER

% **23.01.2017**

CM No. 2733/2017 (Exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

CM No.2732/2017 (for recalling of order dated 22.7.2016) in
W.P.(C) 12314/2015

This application is for recalling of an order dated 22.7.2016 passed by a Division Bench comprising the Hon'ble Mr. Justice Pradeep Nandrajog and the Hon'ble Ms. Justice Pratibha Rani, whereby the writ petition being WP(C) No.12314/2015 filed by the petitioner was dismissed as withdrawn, with liberty to the petitioner

to file a substantive petition/application on the grievance concerning his not being appointed as an Airman in the Indian Air Force, before a forum of competent jurisdiction.

From the aforesaid order dated 22.7.2016, it appears that the Division Bench found that the cause of action on which the writ petition had been filed, had totally been changed in the rejoinder. The petitioner, who had been appearing in person, had not understood the nuances of the law concerning the cause of action for filing a writ petition.

In the order dated 22.7.2016, a reference has been made to the definition of service matter in Section 3(o)(ii) of the Armed Forces Tribunal Act, 2007 and thereafter an observation that the petitioner should approach the forum of competent jurisdiction for remedy. The order dated 22.07.2016, does not specify which is the forum of competent jurisdiction. However, the reference to Section 3(o)(ii) of the Armed Forces Tribunal Act creates the impression that the Court was of the view that the Armed Forces Tribunal was the appropriate forum.

After this Court passed the order dated 22.7.2016, dismissing

the writ application as withdrawn, on the prayer made on behalf of the writ petitioner, the writ petitioner filed an application in the Armed Forces Tribunal, which is pending in the Tribunal.

Counsel appearing on behalf of the applicant has drawn our attention to the counter affidavit filed by the respondents in the Tribunal, where objection has been taken to the jurisdiction of the Tribunal to entertain the application filed by the petitioner.

The cause of action relates to the failure of the respondent authorities to enroll the petitioner as an Airman in the Indian Air Force. The petitioner was a wait listed candidate whose name appeared at Sl.No.143. Ms. Babbar submits on instructions that the last enlisted candidate was at Sl.No. 81.

It is not disputed by Ms. Babbar that the Air Force Tribunal lacks jurisdiction. She agrees that a writ petition would be maintainable in this Court. However, whether the writ court should entertain the writ petition on merits or not is a different issue.

It appears that this Court did not dismiss the writ petition only on the ground of want of jurisdiction to entertain the writ petition. There is a clear observation that the cause of action on which the writ

petition had been filed had totally been changed in the rejoinder. The Court further observed that the petitioner who had filed the writ petition in person, had not understood nuances of the law relating to the cause of action for filing a writ application. The writ petition was not decided on merits. The writ petition was withdrawn with liberty to the petitioner to file a substantive application before the forum of competent jurisdiction, ventilating his grievance concerning his not being appointed as an Airman in the Indian Air Force.

May be this Court has jurisdiction. However, in view of the observation in the order dated 22.7.2016 referred to herein above, and having regard to the fact that the order dated 22.7.2016 was passed on the prayer of the petitioner for leave to withdraw the writ petition, the order dated 22.7.2016 cannot be recalled. The petitioner may, however, file a comprehensive/substantive writ petition in this court with regard to his grievance of not being appointed as an Airman in the Indian Air Force.

We make it absolutely clear that we have not gone into the merits of the contentions of the respective parties and any writ petition filed by the writ petitioner shall be decided on merits in

accordance with law.

The application is disposed of.

INDIRA BANERJEE, J

ANIL KUMAR CHAWLA, J

JANUARY 23, 2017

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