

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5478 OF 2017

Colonel A. D. Nargolkar ... Petitioner
Vs.
The Union of India & Anr. ... Respondents

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Colonel A. D. Nargolkar, Petitioner in person.
Mr. A. M. Setha a/w Mr. Arun Kumar Roy for Respondent No.1.
Ms. Lata Patne for Respondent No.2.

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**CORAM : S. C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

DATE : NOVEMBER 28, 2017.

P.C. :

1. This Petition under Article 226 of the Constitution of India challenges an order passed by the Armed Forces Tribunal, Mumbai, dated 12th January, 2017.
2. All that the order says is that the Appeal before the said Tribunal cannot be adjourned further and the said order records that there is a time limit set by the Hon'ble Supreme Court to decide that proceeding.
3. The order under challenge, copy of which is at page 56 of the paper-book, reads as under:

Arguments have been concluded by the applicant as well as by the learned counsel for the respondents. The senior officer of the Military Secretary's Branch from Delhi had specially been asked to be present to explain the policy

with regard to the promotion. Col. Ajeen Kumar had specially flown from Delhi today in the morning and was present in Court, and he has explained the purport of various provisions / orders / policy letters with regard to imposition of punishment and its impact on the recommendation with regard to the promotion of the applicant.

The Hon'ble Supreme Court had directed for expeditious disposal of the matter twice with reference to specific time-frame, which would expire on 13th January, 2017. It was, therefore, listed on day-to-day basis. It may also be pertinent here to mention that the Hon'ble Supreme Court has given direction twice, starting from 23rd February, 2016, to decide the matter expeditiously, firstly within a period of six months, which could not be adhered to for the reasons which need not be mentioned herein for the present, and then enlarging the time by another four months. It is because of these reasons that the matter was being expedited, to which the applicant was taking offence.

Arguments have been concluded, and orders reserved."

4. The petitioner appearing in person would submit that the Tribunal has abruptly closed the proceedings and without giving him an opportunity of hearing. Once that opportunity is denied, then, this Court can set right the wrong by directing the Tribunal to hear the matter again. The Tribunal can even now be called upon to comply with the principles of natural justice. The party-in-person/petitioner before us does not dispute that in the meanwhile and during pendency of this Petition, the Tribunal has passed the final order dated 29th May, 2017.

5. He would submit that an Appeal lies against this order of the Tribunal, which is final, to the Hon'ble Supreme Court of India, but there is no remedy of Appeal against the order dated 12th January, 2017 and which has caused serious miscarriage of justice.

6. The petitioner being appearing in person, we have carefully perused the Petition and also his grievance. That is noted by us sympathetically. However, we find that in the event the petitioner wishes to challenge the final order in Appeal before the Supreme Court or as is stated, seeks a review of the order passed by the Tribunal by filing a Review Petition before the Tribunal at its Principal Bench and which is pending, then, in both the proceedings, he can raise all the grounds raised in this Petition, including that there is a serious miscarriage or failure of justice because he was not given adequate and reasonable opportunity of being heard. The Tribunal should not have closed the matter for passing orders / reserved its judgment without giving him a full opportunity of being heard. That grievance can always be raised in both the proceedings and by urging appropriate pleas. Once these plural remedies are available to the petitioner, then, without expressing any opinion on the merits of his contentions, the Writ Petition can be disposed of by keeping open all contentions, particularly of the petitioner on the point. The Writ Petition is disposed of accordingly. No costs.

(SMT. BHARATI H. DANGRE, J.)

(S. C. DHARMADHIKARI, J.)