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

+ W.P.(C) 11035/2018

MAJOR VIPIN KUMAR

..... Petitioner

Through

Ms. Garima Sachdeva, Advocate

versus

UNION OF INDIA & ANR.

..... Respondents

Through

Ms. Shiva Lakshmi, CGSC with Mr.

Siddharth Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

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12.10.2018

CM.APPL 42963/2018 (Exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C).11035/2018 & CM.APPL 42962/2018(stay)

The petitioner is aggrieved by the order dated 08.10.2018 passed by the Armed Forces Tribunal (hereinafter referred to as 'AFT'), by which the application seeking stay of the order of termination has been declined.

The petitioner was commissioned as a Short Service Commissioned Officer(SSC) in the Army Dental Corps on 21.02.2013. He was subsequently promoted from the rank of Captain to substantive rank of Major w.e.f. 21.08.2014. The promotion of the petitioner was for a period of 05 years, extendable by two spells of 05 years and 04 years respectively. Post completion of the term of first 05 years, the respondent invited applications from candidates interested in seeking extension of service. The petitioner was shocked to learn that vide letter dated 01.11.2017, he along with two other officers have been declined extension. It is not in dispute that the petitioner was granted provisional extension of his tenure upto 20.01.2018, till the time his statutory complaint was to be decided.

Aggrieved by the disposal of the statutory complaint, the petitioner

preferred an OA before the AFT. The submissions of the petitioner before the AFT and before us today are that till the decision of the OA, the petitioner should be allowed to continue in the service.

The prayer made by the counsel for the petitioner is opposed by the learned counsel for the respondent who appears on an advance copy. Counsel for the respondent submits that once the service has been terminated, an extension cannot be granted and the prayer made cannot be allowed. She further submits that in case the petitioner succeeds in the OA pending before the AFT, he can be granted such relief even for the period he has been out of service, but on the converse if the OA is dismissed, there would be no way to put the clock back.

Having heard the counsels for the parties, we find force in the submission made by the learned counsel for the respondent. The relief sought by the appellant would in fact amount to allowing the writ petition. In case the petitioner succeeds and the OA filed by the petitioner is allowed, the appellant would be entitled to seek such further relief as he may be entitled to in accordance with law. We find no infirmity in the order passed by the AFT which requires interference.

The writ petition is accordingly dismissed.

CM.APPL 42962/2018 also stands dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

OCTOBER 12, 2018

pst /
W.P.(C) 11035/2018