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

+ **W.P.(C) 11643/2018 & C.M. APPL.44991/18**

COL. RAN SINGH DUDEE

..... Petitioner

Through: Mr.Surender K.Gangele, Advocate
with Mr.Vivek Chandra Jaiswal,
Mr.Nitesh Rana & Mr.Siddhart
Shukla, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Kirtiman Singh, CGSC with
Mr.Waize Ali Noor, Mr.Prateek
Dhanda, Ms.Shruti Dutt &
Mr.Vikram Aditya Singh, Advocates.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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29.10.2018

1. The prayer in this petition is for issuance of a direction to the Union of India to pay the Petitioner compensation of Rs.10 crores “for wrongful confinement of the Petitioner and agony and sufferings suffered by the Petitioner and his family members”. The further prayer is for initiation of inquiry proceedings against the officers who were responsible for illegal acts against the Petitioner.

2. The list of dates appended to this petition reveals that the Petitioner who was serving in the Indian Army was subject to Court Martial proceedings which ultimately ended in his complete exoneration with reinstatement and

all consequential benefits. The Petitioner was reinstated on 13th January 2014 in the rank of Lieutenant Colonel.

3. According to the Petitioner, on 2nd July 2014, he submitted a petition to the concerned authorities with regard to his promotion. A petition filed by him before the Armed Forces Tribunal ('AFT'), Lucknow ended in an order being passed by the AFT directing the army to consider his case for promotion.

4. Even at this stage, it appears that the Petitioner made no claim for compensation for what he calls "malicious prosecution". In other words, according to him, the entire Court Martial proceeding which was initiated some time in 2003 and continued till 2014 was without any justification whatsoever.

5. However, the Petitioner took no steps to claim compensation till more than three and a half years later when he filed a petition before the AFT. That petition was dismissed by the AFT on 12th September 2018.

6. Aggrieved by that order, the Petitioner filed Civil Appeal D No.33721 of 2017 under Section 31(1) of the Armed Forces Tribunal Act in the Supreme Court. The order passed by the Supreme Court in the said appeal on 23rd July 2018 reads as under:

"Leave to appeal under Section 31(1) of the Armed Forces Tribunal Act is granted. Permission to appear and argue in-person is also granted.

After some arguments, the appellant, who appears in-person, seeks permission to withdraw this appeal as he accepts that

Armed Forces Tribunal has no jurisdiction to deal with this subject matter. He submits that he would take appropriate remedy for seeking the compensation. Liberty granted.

The Civil Appeal is dismissed as withdrawn with the aforesaid liberty.”

7. According to the learned counsel for the Petitioner, the above order should be construed as a permission granted by the Supreme Court to the Petitioner to file the present writ petition under Article 226 of the Constitution in this Court.

8. The Court is unable to agree with the above submission. What appears to have happened is that the Petitioner who appeared in-person sought the permission of the Supreme Court to withdraw his appeal after accepting that the AFT did not have jurisdiction. He stated that he would seek “appropriate remedy” for compensation. There is no indication whatsoever that the said appropriate remedy was, as understood by the Petitioner, filing a writ petition in this Court. In any event, there is no specific direction by the Supreme Court permitting the Petitioner to file a writ petition before this Court for such relief.

9. The Court notices that for more than three and a half years after his reinstatement, the Petitioner did not move to seek remedy for compensation for malicious prosecution. There is no convincing explanation for this delay in the Petitioner approaching any forum for relief. Moreover, a writ petition claiming monetary compensation without any other relief would *per se* not be maintainable. [See: *Burmah Construction Co. v. State of Orissa AIR 1962 SC 1320* and *Suganmal v. State of Madhya Pradesh AIR 1965 SC 1740*].

10. The Court is, therefore, not inclined to entertain this petition. The petition is accordingly dismissed. The pending application is also disposed of.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

OCTOBER 29, 2018

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