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

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+ **W.P.(C) 11005/2019 & CM 45430/2019 (stay)**

CADET GAUTAM SINGH

..... Petitioner

Through: Ms Archana Ramesh, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr Harish Vaidyanathan Shankar,
CGSC for UOI with Ms Aakanksha
Kaul, Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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21.10.2019

1. By the present petition, Cadet Gautam Singh seeks the quashing of a show-cause notice ('SCN') issued to him by the Indian Naval Academy, Ezhimala on 23rd August, 2019, as well as a consequential letter dated 31st August, 2019, placing him on the 'withdrawal warning list'. A direction is sought to the Respondents i.e. the Chief of Naval Staff and the Director General, Armed Forces Medical Services, to permit the Petitioner to continue his military training, "especially the leftover physical test so that he qualifies and passes out of the Indian Naval Academy".

2. An alternative prayer is to permit the Petitioner to appeal before the Appeal Medical Board and the Army Hospital (R&R), while continuing in military service, in regard to his medical condition and physical fitness in

order for him to be able to complete the last six months of training to become a naval officer.

3. A preliminary objection raised by learned counsel for the Respondents, appearing on advance notice, is that the Petitioner should be asked to exhaust the alternative remedy provided under the Armed Forces Tribunal Act, 2007 ('AFT Act').

4. Ms. Archana Ramesh, learned counsel appearing for the Petitioner, refers to a series of orders passed by this Court, entertaining writ petitions by cadets, including the judgment dated 26th March, 2012, in W.P.(C) No.1143/2011 (***Lady Cadet Shivanjali Sharma v. UOI***); order dated 13th December, 2012 in W.P.(C) No.1834/2012 (***Gentleman Cadet Deepak Kumar v Union of India***); an order dated 19th February, 2016 in W.P.(C) No.11016/2006 (***Gentleman Cadet Vipin Babu v UOI***). Certain other similar orders have also been enclosed with the present petition.

5. Having examined each of those orders, the Court finds that in none of the said cases was an objection raised by the Respondents as to their maintainability before this Court, in view of the provisions of the AFT Act.

6. On the other hand, learned counsel for the Respondents has referred to an order of this Court dated 23rd September, 2013 in W.P.(C) No.3764/2013 (***Aditya Singh Yadav v. Union of India***).

7. Ms. Ramesh refers to Section 2 (1) of the AFT Act, which states that it applies to all persons subject to the Army Act, 1950, the Navy Act, 1957,

and the Air Force Act, 1950. Her contention is that if the person is yet to become an officer in any of the forces to which the AFT Act applies, the question of such person approaching the AFT for relief, does not arise.

8. In response, Mr Harish Vaidyanathan Shankar, learned CGSC appearing for UOI, draws attention to Section 3 (o) of the AFT Act, which defines ‘service matters’ as under:

“(o) service matters, in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), mean all matters relating to the conditions of their service and shall include—

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions;

(iii) summary disposal and trials where the punishment of dismissal is awarded;

(iv) any other matter, whatsoever, but shall not include matters relating to—

(i) orders issued under section 18 of the Army Act, 1950 (46 of 1950), sub-section (1) of section 15 of the Navy Act, 1957 (62 of 1957) and section 18 of the Air Force Act, 1950 (45 of 1950); and

(ii) transfers and postings including the change of place or unit on posting whether individually or as a part of unit, formation or ship in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air

Force Act, 1950 (45 of 1950).

(iii) leave of any kind;

(iv) Summary Court Martial except where the punishment is of dismissal or imprisonment for more than three months”

9. Mr. Shankar draws particular attention to Section 3 (o) (ii), which states that the matters relating to conditions of service “shall include tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion,...”

10. The Court finds that Section 3 (o) of the AFT Act, which defines ‘services matters’, reflects the legislative intent to not restrict such matters only to those who have qualified and have been appointed to the forces, but even to those on probation or undergoing training preparatory to the final appointment. The Court has also perused the matters excluded from the purview of ‘service matters’ and finds that the issue at hand would not stand so excluded.

11. Ms. Ramesh expresses the apprehension that the AFT might hold the Petitioner’s application, if filed before it, to not be maintainable. However, she is unable to place before the Court any order of the AFT, taking such a view. In any event, in view of the categorical stand of the Respondents before this Court, that the subject matter of the present petition would stand covered within the purview of ‘service matters’ under Section 3 (o) of the AFT Act, the Respondents clearly cannot be permitted to raise any objection before the AFT, if the Petitioner approaches it, as to maintainability of such petition there.

12. While the jurisdiction of this Court to entertain a writ petition under Article 226 of the Constitution is wide, it is a discretionary one. Where there exists an efficacious alternative remedy, the Court would be justified in not exercising its jurisdiction.

13. In the present case, the Court finds no reason why the Petitioner should not be asked to exhaust the alternative remedy available to him in accordance with law.

14. The petition is accordingly dismissed with above observations. The pending application is also disposed of. No costs.

15. *Dasti* under the signatures of the Court Master.

S. MURALIDHAR, J.

TALWANT SINGH, J.

OCTOBER 21, 2019

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