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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 3rd September, 2019

Decided on: 12th September, 2019

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W.P(C) 12681/2018

COL. RAN SINGH DUDEE

..... Petitioner

Through: Mr. Vivek Chandra Jaiswal, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Jasmeet Singh, CGSC with Mr. Srivats Kanshal, Advocates for Respondents No.1 and 4.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH**

J U D G M E N T

Dr. S. Muralidhar, J.:

1. Col. Ran Singh Dudee has filed the present petition seeking three reliefs. The first is to direct the author of an order dated 20th November, 2013 issued by the Ministry of Defence (MOD), Government of India (Annexure P-1) to issue a clarification to the Controller of Defence Accounts ('CDA') for 'remaining entitlement' with information to the Petitioner.

2. The second relief is for quashing of an order dated 30th July, 2018 issued by the Adjutant General Army Headquarters, New Delhi which was in compliance with the orders dated 24th January, 2017 and 9th May, 2017 of the Armed Forces Tribunal ('AFT'), Regional Bench, Lucknow.

3. The third prayer is for a direction to the Secretary, MOD to get the order dated 20th November, 2013 implemented in a time-bound manner in accordance with the clarification issued by Respondent No.2, the author of the said order.

4. It must be noticed herein that the Petitioner has impleaded, apart from the Secretary, MOD and the Director Acquisition, MOD as Respondents No.1 and 2 respectively, the State of M.P as Respondent No.3, the Deputy Director in the Adjutant General's branch in New Delhi as Respondent No.4 and one Mr. Kamal Patel an Ex-Revenue Minister in Bhopal as Respondent No.5.

5. The Petitioner has sought to justify not going before the AFT only because it "does not have jurisdiction over State of M.P".

6. It must be noticed that along with the present writ petition the Petitioner had also filed WP(C) 11192/2018 in this Court where again apart from making Respondents No.1 and 2 herein as parties as Respondents No.1 and 3 in that writ petition, he sought to implead the State of MP as Respondent No.4, Mr. Kamal Patel as Respondent No.5 and his own wife and two children as Respondent Nos.6 to 8. The prayer in that petition was again for a direction to the author of the order dated 20th November, 2013 to issue a clarification "to resolve the controversy" on the Petitioner's two pending representations.

7. On 14th March, 2019 this Court dismissed W.P. (C) 11192 of 2018 by the

following order:

“1. Learned counsel for the Petitioner seeks and is granted leave to withdraw the petition to seek other appropriate remedy in accordance with law.

2. Dismissed as withdrawn with liberty as prayed for.”

8. In other words, the Court accepted the preliminary objection of the Respondents that the Petitioner ought to go before the AFT for the above reliefs.

9. Inasmuch as the first prayer i.e. prayer (a) in the present petition [to which Prayer (c) is also connected] is identical to the prayer (a) in W.P. (C) 11192 of 2018, the Court finds substance in the preliminary objection of Respondent Nos.1 and 2 represented by Mr. Jasmeet Singh, learned senior Standing Counsel for the Respondents, that the Petitioner ought to approach the AFT for the relief in relation thereto.

10. The other relief sought in the present petition is for the quashing of the letter dated 30th July, 2018 of the Adjutant General. The said order has been passed in purported compliance of the directions issued by the AFT on 24th January, 2017 and 9th May, 2017 in the applications filed by the present Petitioner. Therefore, the said order indisputably arises from the order of the AFT itself. There is no reason why the State of M.P or Respondent No. 5, who is described as an Ex Revenue Minister in the Government of M.P., should at all be made party to the present petition.

11. The Petitioner has in para 5 of the petition sought to offer a weak explanation as under:

“5. That the entire case is based on the root of the Land Allotment which belongs to the Government of Madhya Pradesh unless the state is made the party no justice can be met with. Since, the State of Madhya Pradesh is the party therefore the AFT has no jurisdiction only Hon’ble High Court has the jurisdiction, Hence Writ Petition before this Hon’ble Court.”

12. The Court finds that the so-called land allotment which forms subject matter of the General Court Martial (GCM) ordered against the Petitioner has no relevance to the reliefs sought in the present petition. The said GCM proceedings were annulled by an order dated 30th November, 2013 passed by the MOD “with all consequential benefits”. One consequential benefit was regarding the promotion denied to the Petitioner during the pendency of the GCM. Although the Petitioner was promoted as Colonel, he was not promoted as Brigadier. Aggrieved by that decision, the Petitioner went before the AFT and succeeded before it.

13. Against the order of the AFT, the Union of India appealed to the Supreme Court. By a detailed judgment dated 3rd July, 2018 the Supreme Court allowed the appeal of the Union of India. The operative portions of the judgment of the Supreme Court read as under:

“11. Having considered the matter in its entirety, we cannot support the view taken by the Tribunal. According to us, the approach of the Tribunal and the assessment made by it were completely erroneous. The Tribunal was also not justified in awarding costs of Rupees five lakhs to the respondent.

12. It may be that the respondent was wrongly proceeded

against and punished by General Court Martial. He was also awarded sentence of imprisonment and lost out nine years of service. The prejudice is quite apparent. However sympathy cannot outweigh the considerations on merit. He has received time scale promotion to the rank of Colonel after having put in 26 years of regular service. But if he was not found suitable for empanelment by way of selection, the matter must end there.

13. We therefore allow both the appeals and set aside Judgments and Orders dated 17.01.2017 and 12.09.2017 passed by the Armed Forces Tribunal, Regional Bench, Lucknow.”

14. It must be noticed here that thereafter, the impugned order dated 30th July, 2018 has been issued by the Adjutant General dealing with various issues raised by the Petitioner as to the consequential reliefs he is entitled to as a result of the order dated 30th November, 2013. As already noticed, all these proceedings stemmed from the GCM. The Petitioner has been consistently approaching the AFT for the reliefs he claims to be entitled to as a result of the order dated 30th November, 2013.

15. There is no occasion in these circumstances for the Petitioner to make the State of M.P or Mr. Kamal Patel, a former Revenue Minister of M.P as party to these proceedings. It appears that they have been made a party only to justify filing of the present writ petition in this Court.

16. The Court is not therefore inclined to entertain this petition. It will, however, be open to the Petitioner to seek appropriate remedies before any other forum, including the AFT, in accordance with law.

17. The petition is accordingly dismissed.

S. MURALIDHAR, J.

TAWANT SINGH, J.

SEPTEMBER 12, 2019

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