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

+ **W.P.(C) 19/2020 and CM APPL.56/2020 (Stay)**

MAJOR GENERAL SUBHASH CHANDRA SHARAN (RETD)

..... Petitioner

Through: Mr.T.Parshad, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr.Kirtiman Singh, CGSC and
Mr.Taha Yasin, Advocate.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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06.01.2020

1. A preliminary objection has been raised by learned counsel for the Respondents to the maintainability of the present petition on two grounds. One is that the impugned order attaching the Petitioner to the Unit at Jodhpur is a 'service matter' within the purview of Section 3 (o) of the Armed Forces Tribunal Act, 2007 (AFT Act) and that a challenge to the impugned attachment order can well be made before the AFT. It is submitted By Mr. Kirtiman Singh, learned counsel for the Respondents that in terms of the judgment dated 10th May, 2019 of the Full Bench (FB) of the AFT in O.A. No. 965/2019 (*Major General M.S.Jaswal v. Union of India*), the Petitioner would have to first approach the AFT for relief.

2. Secondly, it is pointed out that the Petitioner has not in the present petition disclosed about his having filed Writ Petition (Criminal)

No.3614/2019 before the Single Judge of this Court in regard to ‘Invocation Policy’ dated 23rd March, 2007 read with Section 123 of the Army Act, 1950 in which a detailed order was passed by the learned Single Judge on 27th December, 2019.

3. Learned counsel for the Petitioner on the other hand, states that the Petitioner cannot be remediless as regards the impugned attachment order. He contends that since the AFT has taken a view in *M.S.Jaswal case (supra)* interpreting the judgement of the Supreme Court in *Union of India v. Dharamvir Singh 2019 (4) SCALE 559*, the Petitioner has no other recourse but to approach this Court.

4. Having examined the judgment of the Supreme Court in *Dharamvir Singh*, the Court is of the view that para 15 thereof makes it clear that the High Court in exercising jurisdiction under Article 226 of the Constitution would not interfere with an attachment order since it falls within the purview of the expression “service matter” in Section 3(o) the AFT Act. Para 15 of the said judgment reads as under:

“15.The assumption of jurisdiction by the High Court in a Writ Petition under Article 226 of the Constitution was misconceived. We are also of the view that having regard to the definition of the expression “service matters” in Section 3(o) of the Armed Forces Tribunal Act 2007 and the jurisdiction of the Armed Forces Tribunal under Section 14, such a Writ Petition ought not to have been entertained by the High Court. The learned Single Judge should have exercised caution and ought to have been circumspect before he proceeded to stay an order of attachment. Such pre-emptive judicial strikes are unwarranted. The course of action followed by the Single Judge has serious repercussion for the maintenance of discipline in the

Army. Discipline is the essence of the organisation and structure of an Armed Force. Before concluding, we make it clear that we have expressed no opinion on the merits of the allegations, in the exercise of the disciplinary jurisdiction which shall be dealt with in accordance with law. There is no merit in the alternate submission. This Court cannot take over the function of determining which unit the Respondent should be assigned, pending the disciplinary proceedings.”

5. In that view of the matter, the Court declines to exercise its jurisdiction under Article 226 of the Constitution and dismisses the present petition on the ground of maintainability, leaving it open to the Petitioner to approach the AFT for appropriate remedy in accordance with law.

6. Copy of the order be given *dasti* under the signatures of Court Master.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 06, 2020

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