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

+ **W.P.(C) 3216/2020 & CM APPL. 11193/2020 (for stay).**

CAPTAIN NIRVED MISHRA

..... Petitioner

Through: Mr. Indra Sen, Adv.

Versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Prakash Bhardwaj, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

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21.05.2020

[VIA VIDEO CONFERENCING]

CM APPL. 11194/2020 (for exemption) & CM APPL. 11195/2020 (for exemption from filing unattested affidavit and requisite court fees).

1. Allowed subject to just exceptions and in terms of prevalent rules.
2. The applications are disposed of.

W.P.(C) 3216/2020 & CM APPL. 11193/2020 (for stay).

3. This petition under Article 226 of the Constitution of India impugns the order dated 12th March, 2020 of the respondents approving the invalidment of the petitioner from service on medical grounds.
4. It is not in dispute that the challenge to the said order lies before Armed Forces Tribunal (AFT).
5. The counsel for the petitioner states that this petition is preferred because

the AFT is non-functional at present owing to prevalent COVID-19 conditions. It is however informed that the AFT has announced that it will commence operations from 1st June, 2020. The counsel for the petitioner however states that at present AFT is functioning with Chairperson, one Judicial Member and two Administrative Members and one of the Administrative Members is due to superannuate in June, 2020 and thus the functioning of the AFT is like to remain impaired.

6. We have enquired from the counsel for the petitioner, that once the order was passed as far back as on 12th March, 2020, how can at this stage we can stay the termination, as is sought.

7. The counsel for the petitioner states that the termination has not been served by the Commanding Officer of the petitioner, presently posted at Jaisalmer, on the petitioner as yet.

8. The counsel for the respondents states that once the order is so served, the name of the petitioner shall stand struck off from the roll of defence personnel; but as of today it has not been struck off.

9. The counsel for the petitioner states that the petitioner has also preferred a statutory complaint against the Invalidating Medical Board and which has not been decided as yet.

10. He states that the petitioner may be protected till the decision of the statutory complaint preferred by the petitioner.

11. The counsel for the respondents states that he has no instructions with respect to the decision of the statutory complaint.

12. Since the merits of the termination are not to be adjudicated by us, it is

not deemed appropriate to keep this petition pending.

13. The petition is disposed of by directing that no precipitative steps be taken in the matter of termination of the petition till the decision of the statutory complaint of the petitioner, stated to be still pending and which complaint if has not already been decided, be decided latest within two weeks from today.

14. Else we are of the opinion that if the statutory complaint fails and the petitioner takes his remedies before the appropriate forum, if the appropriate forum finds in favour of the petitioner, appropriate orders to do justice to the petitioner even if the termination has come into effect, can always be made.

15. With the aforesaid, the petition is disposed of.

RAJIV SAHAI ENDLAW, J.

SANGITA DHINGRA SEHGAL, J.

MAY 21, 2020

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