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

+ W.P.(C) 3524/2020 & CM No.12527/2020 (for ad interim stay)

AKSHAYA KUMAR

..... Petitioner

Through: Mr. Gaurav Chitkara, Adv.

Versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Dev Prakash Bhardwaj, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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02.07.2020

[VIA VIDEO CONFERENCING]

1. This order is in continuation of the earlier order dated 15th June, 2020.
2. Today Mr. Gaurav Chitkara, Advocate appears for the petitioner and on enquiry states that Mr. Ankit Sethi, Advocate, who on 15th June, 2020 had appeared for the petitioner, is his colleague.
3. Mr. Gaurav Chitkara, Advocate states that the Armed Forces Tribunal (AFT), Lucknow also has taken the same view as taken by AFT, Chandigarh in order dated 31st July, 2018 in OA No. 1229/2017 titled ***Major Amit Kumar Mishra Vs. Union of India*** referred to in the earlier order dated 15th June, 2020. He thus contends that though as per the orders of AFT, Chandigarh and AFT, Lucknow, the Army has no power to deduct any part of the salary of an officer for payment by way of maintenance to the spouse but has still issued the show cause notices impugned in this petition to the

petitioner.

4. The counsel for the petitioner, on enquiry, states that till now no deduction has been commenced from the emoluments of the petitioner.

5. On the last date of hearing, it was the contention of the counsel for the petitioner that AFT has no jurisdiction to decide what has been decided. We have thus enquired from Mr. Gaurav Chitkara, Advocate, whether according to him also AFT has jurisdiction to pass the order as has been passed by the AFT, Chandigarh and AFT, Lucknow.

6. Mr. Gaurav Chitkara, Advocate also states that the AFT has no jurisdiction.

7. Once it is so, reliance on the orders of AFT, Chandigarh and AFT, Lucknow is of no avail. Independently of the same, no ground for interference with the show cause notices impugned in this petition is made out. We may mention that there is no challenge to the provisions i.e. to Section 90(i) of the Army Act, 1950 or to Rule 193 of the Army Rules, 1954 whereunder the powers are purportedly being exercised.

8. The counsel for the respondents informs that the Principal Bench, AFT in OA No.1487/2018 titled ***JWO SK Sahay Vs. Union of India*** and other connected petitions has referred the said question to the Larger Bench. He also states that the petitioner ought to file reply to the show cause notices and participate in the hearing, if any given pursuant thereto and can take all the pleas in the said hearing.

9. The counsel for the petitioner, on enquiry, states that the petitioner has already filed replies to the show cause notices impugned in this petition and is not required to file any further replies.

10. The petition is thus disposed of, for the reason of being not

maintainable against the show cause notices, and with liberty to the petitioner to, if remains aggrieved from the order/s passed in pursuance thereto, take remedies in accordance with law.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

JULY 02, 2020
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