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

+ W.P.(C) 4751/2020 & CM No.17148/2020 (for ad-interim stay)

LAC MANJEET ANTIL

..... Petitioner

Through: Mr. Bhudev Prasad Vaishnav, Adv.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Vinod Diwakar, Mr. Vishal Kumar Singh and Mr. Kavindra Gill, Advts. with Mr. Shailesh Sharma, Wing Commander, Air Force.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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30.07.2020

[VIA VIDEO CONFERENCING]

1. The petition impugns the order dated 24th July, 2020 of the Armed Forces Tribunal, Principal Bench (AFT) in OA No.904/2020 preferred by the petitioner against the discharge order dated 6th July, 2020, of removal of the petitioner from the service of the respondents Air Force. Vide the impugned order, the AFT has though issued notice of OA filed by the petitioner and posted the same on 24th August, 2020 but has declined interim relief, of stay of discharge of the petitioner from the respondents Air Force.
2. The counsel for the petitioner has firstly contended that the impugned order of the AFT is mechanical. It is contended that the judgment dated 16th October, 2015 in Civil Appeal D. No.32135/2015 titled *Veerendra Kumar*

Dubey Vs. Chief of Army Staff & Ors. was filed by the petitioner along with his OA before the AFT but the AFT, in the impugned order dated 24th July, 2020 has recorded the same to have been relied upon by the respondents Air Force.

3. To say the least, the aforesaid cannot be a ground for interfering with the order and is at best a typographical error. The counsel for the petitioner on enquiry confirms that the hearing before the AFT on 24th July, 2020 was via video conferencing. Such virtual hearing and dictation in order therein is a challenge and often leads to such errors. Moreover, the said judgment is on merits of the claim of the petitioner in the OA before the AFT and is not concerned with grant / non-grant of interim relief.

4. The counsel for the petitioner has next sought to argue before us the errors in the findings of the Disciplinary Authorities of the respondents Air Force, leading to the order of discharge of the petitioner from the respondents Air Force. However we do not have the jurisdiction to go into the said aspects, the same being in the exclusive domain of the AFT. The same can at best have an effect on determination of the element of the *prima facie* case, to be considered for grant of interim relief, and which the AFT in the impugned order has already presumed in favour of the petitioner.

5. The counsel for the petitioner has next drawn our attention to the discharge order dated 6th July, 2020 and particularly to paragraph 3 thereof, which is as under:

“3. Airman is to be cleared by 31-Jul-2020 (A/D) from unit. If he is on leave/attachment/T/D etc., he must be re-called immediately. In case the airman is away on sick leave he will be clear on return from such leave on priority incase Airman is AWL, he is to be informed by Regd. A/D post at his recorded

local and home addresses specifically informing him writing that he would be discharged in absentia with effect 31-Jul-2020 in such cases discharge in absentia is to be effected w.e.f. the above specified date and section 122 of AF Act, 1950 be invoked.”

It is argued that the petitioner, though posted at Assam, is on leave, presently at Delhi and is suffering from Covid-19 and is in quarantine. It is contended that inspite thereof, Section 122 of the Air Force Act, 1950, which is to be applied to mutiny, has been invoked.

6. We are unable to agree. A reading of the order aforesaid shows that Section 122 of the Air Force Act has been ordered to be invoked only in case the petitioner is Absent Without Leave (AWL) and is discharged in absentia. As far as the petitioner is concerned, he, according to his own averment, is on leave, in Delhi and as per paragraph 3 of the aforesaid order, the petitioner is to be cleared on return from such leave on priority.

7. The counsel for the respondents Air Force appearing on advance notice confirms that the petitioner is on leave and will be discharged on return.

8. The counsel for the petitioner has next contended that petitioner's fundamental rights are being violated. It is contended that the petitioner has been in the service of the respondents Air Force for the last 10 years and has been ordered to be discharged on summary grounds and has a very good case as per **Veerendra Kumar Dubey** supra and his OA preferred before the AFT is likely to be allowed on the basis of the said judgment alone. It is argued that the petitioner will suffer trauma, if discharged after such long service.

9. The AFT, in the impugned order, after recording the contention of the

counsel for the respondents Air Force appearing before the AFT, that the petitioner has two red-ink entries in the past, opined that even if the petitioner has a *prima facie* case on the basis of his contention that the authorities have not taken note of the seriousness of the subject misconduct and imposed upon him harsh punishment of dismissal, the ingredients of balance of convenience and irreparable loss, for the purposes of grant of interim relief, are not satisfied and not in favour of the petitioner, for the reason that the petitioner, if succeeds in his OA, will be reinstated with all consequential benefits.

10. The counsel for the petitioner before us also has been unable to state how the necessary ingredients of irreparable loss and injury and balance of convenience, to be satisfied to be entitled to the interim relief, are satisfied in this case. On the contrary, in view of the findings on which the petitioner has been discharged, we are of the view that allowing the petitioner by way of interim relief, to continue in the respondents Air Force, may be prejudicial in the larger interest of the respondents Air Force.

11. We may mention that we have recently in judgment dated 23rd July, 2020 in W.P.(C) No. 4413/2020 titled ***CDR Senthil VP Vs. Union of India*** and other connected petitions dealt with the aspect of interim relief in the matter of discharge of short service commission officers of the Indian Navy and have given reasoning in detail and also dealt with the said aspect in judgment dated 15th July, 2020 in W.P.(C) No. 4138/2020 titled ***Col (TS) Ajay Sangwan Vs. Union of India*** pertaining to premature retirement of a Colonel (Time-Scale) in the Indian Army.

12. No error is thus found in the impugned order, requiring interference, in exercise of jurisdiction under Article 226 of the Constitution of India,

parameters whereof are narrower than that of appeal against interim order.

13. At this stage, Wing Commander Shailesh Sharma has also joined the hearing and on enquiry states that the petitioner will be discharged tomorrow i.e. 31st July, 2020. On further enquiry, he states that the petitioner is not on sick leave but on earned leave and vide letter dated 20th July, 2020 at page 99 of the paper book was informed to report to the Unit to complete the discharge facilities before 31st July, 2020 but even if he has not reported, he will still be discharged.

14. The counsel for the petitioner confirms that the petitioner is on earned leave and not on sick leave. He however contends that the petitioner cannot be so discharged. However, no Rule in support of the said argument is shown.

15. Dismissed.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

JULY 30, 2020

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