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

% **Date of Decision: 31st July, 2020**

+ **W.P. (C) 4829 /2020**

A. LOGANATHAN

..... Petitioner

Through: Mr. Uday Shankar Maurya, Adv.

Versus

UNION OF INDIA & ORS.

.....Respondents

Through: Ms. Suman Chauhan, CGSC with
Ms. Aakansha Kaul and Mr.
Manek Singh, Adv.

AND

+ **W.P. (C) 4830 /2020**

GURCHARAN SINGH

..... Petitioner

Through: Mr. Uday Shankar Maurya, Adv.

Versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. HV Shankar, CGSC

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE RAJIV SAHAI ENDLAW

C.M. Appln. Nos. 17433/2020 & 17435/2020 (Exemption from filing certified copies of the annexures and from filing attested copy of notary of affidavit/deficiency of court fee) in W.P. (C) 4829/2020

C.M. Appln. Nos. 17436/2020 & 17438/2020 (Exemption from filing certified copies of the annexures and from filing attested copy of notary of affidavit/deficiency of court fee) in W.P. (C) 4830/2020

1. Allowed, subject to just exceptions and as per the extant rules.
2. The applications are disposed of.

W.P. (C) 4829/2020, C.M. Appln. 17434/2020 (for stay)
W.P. (C) 4830/2020, C.M. Appln. 17437/2020 (for stay)

3. The Petitioner in both these petitions are the applicants in OA No.624/2020 and OA No.855/2020 respectively preferred before the Armed Forces Tribunal, Principle Bench, New Delhi (AFT), filed by the petitioners against the orders of the respondents 1 to 3 Indian Army of discharge of the petitioner in each of these petitions from service, for the reason of 'Low Medical Category'. The AFT, though has issued notice of the OAs filed by the petitioners impugning the order of their discharge, but has refused to grant the interim relief sought by the petitioners, of stay of the order of discharge and which would have led to the petitioners continuing in the service of the respondents No. 1 to 3 Indian Army till the decision of the OA or even thereafter. Aggrieved therefrom, these petitions have been preferred.

4. We may mention that both the petitioners, enrolled as sepoy with the respondents No. 1 to 3 Indian Army, way back in 1996, were discharged in 2013, after 17 years of service but were thereafter, in about the year 2015, enrolled in Defence Security Corps, for a period of ten years, i.e., till the year 2025.

5. The counsel for the petitioners has vehemently argued before us that the order of discharge of each of the petitioners, on the ground of 'Low Medical Category', is erroneous, contrary to judgments of this court, and is liable to be set aside. A judgment of the Division Bench of this Court being judgment dated 25th September, 2008 in W.P. (C) 698/1986 titled ***Subedar M.T.V. Kunhi Kannan Nambiar Vs. Union of India*** in this respect is cited and it is contended that the petitioners are entitled to continue in service till the year 2025.

6. We have enquired from the counsel for the petitioners, whether not, in the event of the petitioners being successful in the OAs filed by them before the AFT, the reinstatement of the petitioners will be with all consequential benefits of what the petitioners would have earned during the said time.

7. The counsel for the petitioners states that, 'undoubtedly so, but the petitioners by then would be too old to enjoy the money even if paid to them'.

8. We are of the opinion that even if a prima facie case is to exist in favour of the petitioners, for the petitioners to be entitled to

interim relief, the petitioners have to show not only a prima facie case but also that if the interim relief is not granted, they will suffer an 'irreparable loss and injury' and that the 'balance of convenience' is also in the grant of interim relief rather than in non-grant thereof. In spite of our asking, no arguments have been addressed on this aspect.

9. We are of the view that the said two ingredients of 'irreparable loss' and 'balance of convenience' are not satisfied by the petitioners. As aforesaid, the petitioners, in the event of succeeding in the OAs filed by them before the AFT, would get all the emoluments, which they would have earned had the order not been passed. No case of any irreparability of the injury caused by non-payment of emoluments month by month, is pleaded. On the contrary, the 'balance of convenience' is not in favour of imposing the petitioners, who have been found unfit, on a disciplined force like the Indian Army. The presence/continuation of the petitioners in the Indian Army, under Court orders, can be detrimental to the discipline required and expected in a Force like the Indian Army, with the petitioners, under the blanket of Court order, not abiding by the discipline required.

9. We may mention that we have dealt with such interim reliefs in judgment dated 15th July, 2020 in W.P.(C) No. 4138/2020 titled ***Col (TS) Ajay Sangwan Vs. Union of India*** and 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 also and given

detailed reasons therein and in view thereof, do not feel the need to reiterate the same.

10. It also cannot be lost sight of that the AFT has been constituted as a specialist Tribunal to deal with the disputes as have arisen, relating to Armed Forces and the writ jurisdiction of this Court has been invoked against the order of the AFT of non-grant of interim relief. Once the order of the AFT is found to be in accordance with law and no perversity is found therein, the question of interference in writ jurisdiction does not arise.

12. The petitions are dismissed.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

JULY 31, 2020

ak/pkb