

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

% **Date of decision: 4th September, 2020.**

+ **W.P.(C) 5973/2020**

MD. AZAM ANSARI **..... Petitioner**

Through: Mr. Mohd. Azam Ansari, Adv.

Versus

UNION OF INDIA & ORS. **..... Respondents**

Through: Mr. Neeraj, Mr. Sahaj Garg, Mr. Piyush Beriwal, Mr. Ankit Raj, Ms. Damini Garg & Ms. Vandana Dewan, Adv. for R-1 to 3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the order dated 11th November, 2010 of the Armed Forces Tribunal (AFT) Principal Bench New Delhi, of dismissal for non-prosecution of T.A. No.53/2009 and seeks mandamus to the AFT, to restore the said T.A. No.53/2009 to the position in which it was prior to 11th November, 2010, and in case the petitioner succeeds in T.A. No.53/2009, issue a mandamus to the respondents Indian Air Force to treat the petitioner to be deemed discharged from service instead of having been dismissed from service, with effect from the date of dismissal i.e. 20th July, 2010.

2. It is the case of the petitioner, that (i) the petitioner filed W.P.(C) No.8452/2008 in this Court seeking the relief of premature retirement from

the respondents Indian Air Force; (ii) the said writ petition was admitted for hearing on 15th July, 2009 and posted for final hearing on 8th September, 2009; (iii) however in the interregnum, the Armed Forces Tribunal Act, 2007 was enacted and operationalized and in terms thereof, vide order dated 31st August, 2009 of this Court, W.P.(C) No.8452/2020 filed by the petitioner was transferred to the AFT and registered as T.A. No.53/2009; (iv) the petitioner, on 20th July, 2010, post disciplinary proceedings initiated against him, was dismissed from service of the Indian Air Force and OA No.74/2012 preferred by the petitioner against his dismissal was dismissed by the AFT on 24th May, 2016 and the Supreme Court, on 15th June, 2016 disposed of the appeal preferred by the petitioner against the order dated 24th May, 2016 of AFT; (v) vide order dated 4th December, 2019, AFT also dismissed OA No.42/2012 preferred by the petitioner seeking the relief of grant of pension; (vi) the petitioner applied to the Supreme Court for leave to appeal against the order dated 4th December, 2019 of AFT of dismissal of OA No.42/2012 but the Supreme Court, vide order dated 14th July, 2020 dismissed the said application for leave to appeal; (vii) though the petitioner, in the interregnum had also applied to the AFT for leave to appeal to the Supreme Court against the order dated 4th December, 2019 of dismissal of OA No.42/2012 but post dismissal of the leave to appeal by the Supreme Court, on 21st August, 2020, withdrew the leave to appeal from the AFT; and, (viii) though the petitioner had filed MA No.1188/2020 in the AFT for leave to appeal to the Supreme Court against the order dated 11th November, 2010 of dismissal of T.A. No.53/2009 but in view of the judgment in ***Balkrishna Ram Vs. Union of India*** (2020) 2 SCC 442, on 21st August, 2020, withdrew MA No.1188/2020, to prefer this petition.

3. The counsel from the petitioner has contended that in the aforesaid circumstances, there are sufficient grounds for this Court to condone the delay of ten years in impugning the order dated 11th November, 2010 of the AFT.

4. We have enquired from the counsel for the petitioner, whether post dismissal from service of the petitioner and which order of dismissal has attained finality till the Supreme Court, the petitioner, in T.A. No.53/2009 can be granted the relief of premature retirement. We have further put it to the counsel for the petitioner, whether not premature retirement, even if were to be granted in T.A. No.53/2009 would have been granted from the date ordered and not from the date of filing of the writ petition in this Court and whether not the petitioner, notwithstanding filing of W.P.(C) No.8452/2020, remained subject to disciplinary enquiry and pursuant to which disciplinary enquiry, has been dismissed from service.

5. The counsel for the petitioner states that he is not seeking prayer '(A)' in the writ petition, impugning the order dated 11th November, 2010 but is only seeking prayer '(B)' i.e. to treat the petitioner to be deemed discharged from service instead of being dismissed from service.

6. We are afraid, the aforesaid also is not possible once the petitioner has been dismissed from service and ordering so would amount to interfering with the order of dismissal from service as well as with the order qua pension, which have attained finality.

7. The petition is entirely misconceived and in waste and abuse of time of the Court and though deserves to be dismissed with exemplary costs but we are refraining from imposing costs.

8. Dismissed.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

SEPTEMBER 4, 2020
'gsr'

