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

Date of decision: 18th November, 2020

+ **WP (C) No. 8018/2020& CM APPL. 26120/2020 (for stay)**

HAVILDAR BIRENDRA ... PETITIONER

Through: Mr. Arvind Kumar Shukla,
Advocate

Versus

UNION OF INDIA & ORS ... RESPONDENTS

Through: Mr. Harish Vaidyanathan Shankar,
CGSC

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

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[VIA VIDEO CONFERENCING]

ASHA MENON, J.

1. The present petition has been filed by the petitioner challenging his pre-mature discharge from the Army, and has sought the following reliefs:

a) issue an appropriate writ, order or direction quashing the letter along with movement order dated 31st August 2020 discharging the petitioner from services and/or;

b) issue an appropriate writ, order or direction to the respondent to revoke the order dated 31st August 2020 discharging the petitioner from services and to reinstate the petitioner in the services and/or;

c) issue appropriate writ, order or direction in the nature of mandamus, commanding the respondent number 1 to initiate proper enquiry for extracting the truth, and punishing the persons involved in this manipulation for discharging the petitioner in Acropolis and of procedures and regulations of Army;

d) pass any other order(s) as this Hon'ble court may deem fit, in the facts and circumstances of the case, in the interest of justice.

2. The petitioner joined the Army as a Sepoy on 29th March 2009 and was assigned to the 6th JAT Bn. The petitioner claims to be a good athlete and to have won several medals in various tournaments and events during his service with the Army. He also claims to have been given accelerated promotion from Sepoy to Naik and thereafter to Havildar due to his sports achievements.

3. Unfortunately, an F.I.R. was registered against him bearing FIR No. 11/2020 under Sections 494, 376D, 120 B, 323 and 504 of IPC, at P.S. B.B.Nagar, District Bulandshahar, but after the police investigated the matter, no substance was found in the allegations. Though he had been taken into custody, he was admitted to bail on 20th February 2020 on orders of the Judicial Magistrate First Class that the matter may be proceeded against him only for offences other than under section 494 and 376D IPC. The petitioner claims that he was pressurised into trying to settle the matter with the

complainant so that he could be discharged from the criminal offences and be acquitted as there was every chance of proceedings for court-martial being initiated against him.

4. The petitioner has claimed that he was granted annual leave from 17th August 2020 to 4th September 2020. While he was at his hometown, certain persons claiming to be Army personnel approached him telephonically and in person, representing to him, that a court martial and disciplinary proceedings were imminent against him and the only way out for him was by submitting resignation. On 28th August 2020 the signatures of the petitioner were taken on an undated letter of resignation and which was subsequently dated 26th August 2020. However, soon thereafter, on 29th August 2020, the petitioner as well as his wife, sent representations by means of a letter and WhatsApp messages, expressing his unwillingness to resign and informing that his signatures have been taken under these circumstances and coercion. He also reported for duty on 5th September 2020 but was not allowed to enter the camp and on 17th September 2020 he received an order dated 31st August 2020 discharging him from service.

5. Vide order dated 15th October 2020, when the case had come up for hearing before us, we had observed that the entire claim of the petitioner regarding the withdrawal of resignation and the reinstatement was based on a factual controversy of coercion and whether an adjudication of factual controversy could be undertaken

in exercise of jurisdiction under Article 226. The query was posed to both the learned counsel for the parties. The learned counsel for the respondents contended that this court had no jurisdiction to adjudicate the dispute at hand as the jurisdiction was of the Armed Forces Tribunal (AFT).

6. With regard to the option granted to the petitioner that directions may be issued by us to the respondents to conduct a proper inquiry treating the writ petition as a representation of the petitioner and to investigate the factual controversy and if satisfied, to take back the petitioner and if not satisfied, to reject, giving detailed reasons which were to be communicated to the petitioner, who would also have the liberty to avail legal remedies thereafter, the learned counsel for the petitioner contended that the investigation by the respondents may be directed but that the writ petition be not disposed of.

7. In this background, the counsel for the petitioner was granted time to consider the matter and an opportunity was given to the counsel for the respondent to place on record the orders of the AFT to establish that the jurisdiction in such matters lay with the AFT and not this court. The matter was fixed for today. The learned counsel for the respondent has e-mailed to us three orders of the AFT along with a short note/final written submission.

8. We have heard both learned counsels and have considered the material on record.

9. The decisions of the AFT in *O.A. No. 597 of 2010 (Nb.Ris. Surjit Singh)*, *O.A.No.1062 of 2017 (Maj. Naveen Khare (Retd))* and *O.A. No. 31 of 2015 (Ex-Sep (GDSM) Kuldeep Kumar)* no doubt deal with matters in which the applicant was prematurely discharged on his own request. But even otherwise, on law, we are satisfied that we do not have jurisdiction to deal with the matter at hand. Section 2 of The Armed Forces Tribunal Act, 2007, has clearly laid down that it shall apply to retired personnel subject to the Army Act, insofar as it relates to their service matters.

10. Section 22 of the Army Act 1950 provides for retirement, release or discharge of any person subject to the provisions of the Army Act. Admittedly, the petitioner was subject to the provisions of the Army Act and therefore, he sought and was granted discharge only under Section 22 thereof.

11. The Armed Forces Tribunal Act, 2007 has defined the jurisdiction and powers and authority of the AFT under Section 14 which reads as below:

“14. Jurisdiction, powers and authority in service matters. – (1) Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority, exercisable immediately before that day by all courts (except the Supreme Court or a High Court exercising jurisdiction under article 226 and 227 of the Constitution) in relation to all service matters.

(2) Subject to the other provisions of this Act, a person aggrieved by an order pertaining to any

service matter may make an application to the Tribunal in such form and accompanied by such documents or other evidence and on payment of such fees as may be prescribed.

(3)

(4) *For the purpose of adjudicating an application, the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, (5 of 1908) while trying a suit*

(emphasis added)

12. What constitutes service matters has been defined in Section 3 (o) of the Armed Forces Tribunal Act, 2007 as below:

*“(o) “**service matters**”, in relation to the persons subject to the Army Act, 1950 (46 of 1950) the Navy Act, 1957 (62 of 1957), and the Air Force Act, 1950 (45 of 1950), mean all matters relating to the conditions of their service and shall include-*

(i) remuneration including allowances, pension and other retirement benefits;

(ii) tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions;

*(iii) ” **(emphasis added).***

13. Premature retirement is thus, a service matter. Since “premature retirement” is used for Officers and “discharge” is used with reference to others in the Army, it would be contrived to say

one is to be dealt with by the AFT and the other is outside its jurisdiction, for retirement, release and discharge are provided for under section 22 of the Army Act, 1950, and constitutes service matter. The petitioner before us sought his discharge under the said provision and was discharged. Now he alleges that he was coerced into writing the letter seeking discharge.

14. Clearly it is the AFT which has the jurisdiction to consider the allegations in the instant petition, it has the powers of a civil court vested in it if it chooses to investigate and enquire into the allegations. We have no manner of doubt in our mind that the AFT is the right forum for the petitioner to seek his remedy.

15. The petition is accordingly dismissed with liberty granted to the petitioner to approach the AFT for relief, if so advised.

ASHA MENON
(JUDGE)

RAJIV SAHAI ENDLAW
(JUDGE)

NOVEMBER 18, 2020
(Corrected & released on 5th December 2020)
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