HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Writ Petition No. 2023/2020

Sadasukh Bishnoi S/o Shri Danaram Bishnoi, Aged About 37 Years, Working As A Sergent In 48 Wing, Air Force Station Phalodi (Raj)

----Petitioner

Versus

1. Union Of India, Through Secretary, Ministry Of Defense, Raisina Hills, South Block, New Delhi 110011.
2. The Chief Of Air Staff, Air Headquarter Vayu Bhawan, Rafi Marg, New Delhi 110011
3. Air Officer Commanding-In-Chief, South Western Air Command, Iaf, Sector-9 Gandhi Nagar (Gujarat) Pin-382009
4. Station Commander, 48 Wing, Air Force Station, Phalodi (Raj)

----Respondents

For Petitioner(s)	:	Mr. Bhavit Sharma, through Cisco Webex App
For Respondent(s)	:	Mr. Mukesh Rajpurohit, ASG, through Cisco Webex App

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JUSTICE DINESH MEHTA

Order

04/12/2020

1. The petitioner has preferred the present writ petition laying challenge to communication dated 24.01.2020, whereby the petitioner was ordered to remain present before the District Court Martial, in the third week of February, 2020.

2. A second stay application has been preferred by the petitioner, inter alia, seeking stay of the proceedings before the said Court Martial.

3. Mr. Mukesh Rajpurohit, learned Additional Solicitor General, appearing for Union of India, raises a preliminary objection that the present writ petition before this Court is not maintainable and petitioner is required to approach Armed Forces Tribunal under the provisions of Armed Forces Tribunal Act, 2007 (for short, 'the Act of 2007').

4. He asserts that the Tribunal is regularly functioning and even the matters, which are filed at Jodhpur or Jaipur Bench of the Tribunal, are being considered by the Members of the Tribunal through video confrencing.

5. Mr. Bhavit Sharma, learned counsel for the petitioner, while pointing out that when the present writ petition was filed and notices were issued (on 12.02.2020), the Tribunal was not functioning, submits that relegating the petitioner to avail remedies before the Tribunal at this Stage, would be inequitable, particularly when the pleadings in the matter are complete.

6. Heard.

7. According to the provisions contained in sub-section (2) of Section 14 and Section 15 of the Act of 2007, matters relating to services of members of the Armed Forces are required to be agitated before and adjudicated by the Armed Forces Tribunal.

8. Section 34 of the Act of 2007 even mandates transfer of pending cases from High Court to such Tribunal.

9. In view of the above and having regard to the statement made by Mr. Rajpurohit that the Armed Forces Tribunal is functioning and taking up the matters through virtual hearing, this Court is not inclined to proceed with the present matter.

10. The writ petition is, therefore, disposed of with a direction to the petitioner to prefer appeal/petition along with stay application

under Section 14/15 or any other relevant provisions of the Act of 2007 on or before 05.01.2021.

11. The Registrar of the Tribunal is directed to place the matter along with the stay application before the appropriate Bench for consideration as early as possible preferably within two weeks.

12. Till 20.01.2021, the proceedings before the District Court Martial, 48 Wing, Air Force Station, Phalodi, Jodhpur shall remain stayed. Thereafter, order to be passed by the Armed Forces Tribunal in petitioner's appeal/petition/stay application shall hold the field.

13. First and second stay applications and all interlocutory applications stand disposed of.

(DINESH MEHTA),J

117-skm/-

RAJASTHAN HIGH COURT
सत्यमेव जयते