

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 13303 of 2021

No.15180300N, Lance Naik (Dresser)
Kiranmoy Sanyal
Vs.
The Union of India & Ors.

Mr. S.K. Choudhury
... For the petitioner

Ms. Chandreyi Alam
Ms. Runu Mukherjee
... For respondent no.1/UOI

The petitioner says to be enrolled in the Army as a dresser. The petitioner in the instant writ petition has, inter alia, challenged the order dated 1st June, 2021 by which a pre-mature discharge of the petitioner has been ordered. The instant writ petition was filed on 26th August, 2021.

The issue in this writ petition is covered by the provision of Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as the “2007 Act”). The forum before which the petitioner is required to ventilate his grievances is the Armed Forces Tribunal constituted under the 2007 Act. The petitioner says that the Regional Bench of the Armed Forces Tribunal at Kolkata is not functional as there is no judicial member therein. The petitioner further says that prior to 30th April, 2021, the Principal Bench of the Armed Forces Tribunal at New Delhi was

hearing the matters pertaining to the jurisdiction of the Regional Bench at Kolkata through virtual mode. However, in view of an order dated 30th April, 2021 passed by a Division Bench of this Court in MAT 19 of 2021 with CAN 1 of 2021 (Col. Nikhil Pareek v. Union of India & Ors.), wherein it has been observed that the Chairperson or the judicial member of one Bench can function as an administrative member of another Bench. For this observation, it is construed that the judicial member at the Principal Bench could function only to be an administrative member of the Regional Bench at Kolkata and not as a judicial member. The petitioner also says that in view of such observations made by the Division Bench in the order dated 30th April, 2021, the Principal Bench at New Delhi is not hearing any matter pertaining to the Kolkata Bench.

On a query from Court, the petitioner says that he can file the case before the Armed Forces Tribunal since the registry of the Regional Bench of Armed Forces Tribunal at Kolkata is functioning but his matter is not likely to be heard before 31st October, 2021 when the discharge order as against the petitioner will become operational. The petitioner submits that in view of urgency the petitioner has approached this Court instead of approaching the Armed Forces Tribunal.

The respondents, however, raise a jurisdictional issue in this Court entertaining a writ petition which

squarely falls within the purview of the Armed Forces Tribunal.

The petitioner, in view of such point being raised by the respondents, prays for withdrawal of the writ petition and to permit the petitioner to file the same before the Armed Forces Tribunal.

Since there is apparent lack of jurisdiction in this Court in entertaining a writ petition, the subject matter of which is within the domain of Armed Forces Tribunal, I cannot grant the petitioner leave to file before the Armed Forces Tribunal on the selfsame cause of action, but I can always allow the withdrawal of the writ petition. It will be open for the petitioner, if permitted in law, to approach the Armed Forces Tribunal.

The writ petition is dismissed as withdrawn without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Arindam Mukherjee, J.)