

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3378 OF 2021

LT COL Rahul Singh] Petitioner

Vs.

Union of India and others.] Respondents

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Ms. Neela Gokhale i/b Ms. Yogini Ugale, for Petitioner.

Mr. Neel Helekar a/w A.A. Garge, for Respondent-Union Bank of India.

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**CORAM : K.K. TATED &
PRITHVIRAJ K. CHAVAN, JJ.**

DATE : 27th JULY, 2021.
[Through Video Conferencing]

P.C.

1. Heard learned Counsel for the parties.
2. By this petition under Article 226 of the Constitution of India, the petitioner is challenging the Censure order dated 19th June, 2019 passed by the respondents in respect of petitioner's service matter.
3. Ms. Gokhale, learned Counsel for the petitioner submits that the petitioner is an officer in Indian Army presently posted at

Pune. She submits that the Department made a reference in his service book as 'displeasure' without following due process of law. Hence, the petitioner has filed the present petition.

4. Ms. Gokhale, learned Counsel appearing for the petitioner submits that though there is efficacious remedy available under section 3 (o) of the Armed Forces Tribunal Act, 2007, the petitioner has filed the present petition in this Court because the said Tribunal is not taking all the matters because of Covid 19. She submits that to that effect, the petitioner made a reference in paragraph 18 of the present petition which reads thus;

“18. It is submitted that the said matter being a service matter as defined in section 3 (o) of the Armed Forces Tribunal Act, 2007 and may be within the jurisdiction of the AFT, however, the Ld Tribunal Mumbai is not regularly assembly and hence the petitioner is unable to invoke the said jurisdiction of the Ld. AFT. Moreover, the writ jurisdiction of the Hon'ble High Court is a saving provision under section 14 of Armed Forces Act 2007 and the Ld Armed Forces Tribunal does not exercise jurisdiction under article 226 and 227 and the petitioner has alleged violation of fundamental rights”.

5. During the course of the arguments, learned Counsel for the petitioner relied on section 3(o) of the said Act which read thus;

“3. Definitions._ In this Act, unless the context otherwise requires,_

(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) summary disposal and trials where the punishment of dismissal is awarded;

(iv) any other matter, whatsoever,

but shall not include matters relating to_

(i) orders issued under section 18 of the Army Act, 1950 (46 of 1950), sub-section

(1) of section 15 of the Navy Act, 1957 (62 of 1957) and section 18 of the Air Force Act, 1950 (45 of 1950); and

(ii)transfers and postings including the change of place or unit on posting whether individually or as a part of unit, formation or ship 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)

(iii)leave of any kind;

(iv)Summary Court Martial except where the punishment is of dismissal or imprisonment for more than three months;”

6. When this Court declined to entertain the present petition under Article 226 of the Constitution of India in view of availability of alternate efficacious remedy to the petitioner, Ms. Gokhale, learned Counsel for the petitioner submits that the petitioner may be permitted to withdraw the present writ petition with liberty to file appropriate proceedings before the Tribunal as per law. The same is permitted.

7. Hence, the following order;

: ORDER :

(a) Writ Petition stands disposed of as withdrawn with liberty to file appropriate proceedings before the Tribunal for the same cause of action.

(b) No order as to costs.

[PRITHVIRAJ K. CHAVAN, J.]

[K. K. TATED, J.]