

**211 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.3907 of 2020 (O&M)
Date of decision : April 07, 2021**

Mandeep Singh

..... Petitioner

Versus

Union of India and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. G.S. Ghuman, Advocate for the petitioner.

Ms. Anita Balyan, Advocate for UOI.

RAJBIR SEHRAWAT, J. (ORAL)

CM-10228-CWP-2020

Application is allowed as prayed for.

Written statement filed on behalf of the respondents is taken on record.

CM-11647-CWP-2020

Application is allowed as prayed for.

Rejoinder in response to the written statement filed on behalf of the respondents is taken on record.

Main case

The prayer made in the present writ petition is for quashing the order declaring the petitioner as Deserter/Absentee without leave, issued by respondent No.3 vide its letter No.3814 Phillora dated 22.06.2019 (Annexure P-15).

A perusal of the paper book shows that prayer of the petitioner is for setting aside the orders passed by the authorities whereby the

petitioner has been declared to be a deserter. It is not even disputed that as of today petitioner is no more in service. As per Section 3(o) of the Armed Forces Tribunal Act, 2007, all service matters are required to be adjudicated upon by the Armed Forces Tribunal in the first instance. Section 3(o) of the Armed Forces Tribunal Act, 2007 is reproduced as under:

“ (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; ”

Hence the petitioner is having a statutory remedy of adjudication. Although the petitioner has also included a prayer regarding transfer from one regiment to another regiment, so as to bring the matter within the jurisdiction of the High Court and to exclude the same from the jurisdiction of the Armed Forces Tribunal, however, the question of transfer would arise only if the order of declaration of the petitioner as deserter is set aside.

Although counsel for the petitioner has referred to a judgment passed by the Supreme Court in case of **“Balkrishna Ram v UOI and another”, 2020 (AIR) SC 341**, however, this Court finds that the said judgment is totally distinguishable. A bare reading of the said judgment shows that the Supreme Court has only clarified that the High Courts would have jurisdiction even in those cases where the person might be having an alternate remedy. At the same time, the Supreme Court has been quick to add that merely because the High Court has the jurisdiction, would not mean that the High Court is required to exercise the said jurisdiction. The question of entertainment of a writ petition under Article 226 of the Constitution of India would be a matter of discretion of the High Court and not of the jurisdiction as such. In the present case; this Court is not declining to entertain the petition filed by the petitioner for want of jurisdiction. However, this Court is not inclined to interfere in view of the fact that there is a statutory body created for adjudicating upon the issues of Armed Forces, where the High Court would always loath to interfere.

Since the petitioner is having a statutory remedy, therefore, this Court does not deem it appropriate to interfere in the present petition; at this stage.

Hence the present petition is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

April 07, 2021

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Whether speaking / reasoned	Yes
Whether Reportable:	No