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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 4400/2021 & CM No.13477/2021 (for maintainability)
SHASHI BHANU Petitioner
Through: Mr.Anuj Chauhan, Adv.
versus
UNION OF INDIA AND ANR. Respondents
Through: Mr.Harish Vaidyanathan Shankar and
Mr.Syed Husain Adil Taqvi, Avs. for
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CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

% **08.04.2021**

C.M. No.13476/2021 (for exemption)

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

W.P.(C) 4400/2021 and C.M. No. 13477/2021 (for maintainability)

3. The petition seeks a declaration, that Rule 9 (1) of the Central Civil Services (Leave) Rules, 1972 (CCS Leave Rules, 1972) is unconstitutional, on the ground that it discriminates between a government servant convicted by a Criminal Court “before the date of retirement” and a government servant who “remains under suspension and is convicted after superannuation”. It is the contention of the counsel for petitioner that while leave encashment is not sanctioned to a government servant on his dismissal in terms of Rule 9(1) of the CCS Leave Rules, 1972, the government sanctions leave encashment to government servant on his superannuation, if he remains under suspension.
4. We have enquired from the counsel for the petitioner, why the petition has been filed in this Court, instead of approaching CAT, which according

to the counsel for the petitioner also, has jurisdiction to entertain this claim.

5. The counsel for the petitioner states that this Court has been approached since the issue raised in the petition is already pending consideration before this Court in W.P.(C) 7119/2019 titled ***Mohan Lal Vs. Union of India***, notice whereof was issued on 5th July, 2019.

6. The computer search indicates that though W.P.(C) 7119/2019 has also been preferred without first approaching CAT, but notice thereof was nevertheless issued without considering the said aspect.

7. Merely because notice has been issued of W.P.(C) 7119/2019, would not require us to issue notice of this petition also when the same is otherwise found to be not maintainable.

8. The counsel for the respondents appearing on advance notice, refers to paras 8 to 16 of ***Rajeev Kumar Vs. Hemraj Singh Chauhan*** (2010) 4 SCC 554, where it was reiterated (a) that CAT and other Tribunals, created under Articles 323A and 323B of the Constitution of India, will function as only Court of first instance and are subject to the power of judicial review of the High Court under Articles 226 and 227; (b) that the Tribunals are empowered even to deal with constitutional questions and can also examine the vires of statutory legislation, except the vires of the legislation which creates the particular Tribunal; (c) that it will not be open for litigants to directly approach the High Courts, even in cases where question the vires of statutory legislations, overlooking the jurisdiction of the Tribunal concerned; (d) that the approach made to the High Court, in respect of service disputes, over which CAT has jurisdiction, is not legally sustainable; and, (e) that the High Court cannot be approached by treating it as a Court of first instance.

9. The petition is accordingly dismissed, with liberty to the petitioner to

avail of remedies in accordance with law.

10. A perusal of the order dated 5th July, 2019 in W.P.(C) 7119/2019 shows Mr. Akshay Makhija, since designated senior counsel, to have appeared on behalf of the Union of India and the said writ petition to be now scheduled on 4th May, 2021.

11. Mr. Harish Vaidyanathan Shankar, Advocate is requested to take instructions in W.P.(C) 7119/2019 and apply for early hearing of that writ petition also, so that if the same is also required to be sent to CAT, the orders therein are not delayed.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

APRIL 8, 2021
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