

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 25th May, 2021**

+ **W.P.(C) 5503/2021**

ROHIT SHARMA Petitioner
Through: Mr. Jai Singh Mann, Advocate.

Versus

UNION OF INDIA & ANR. Respondents
Through: Mr. Vikram Jetley, CGSC for R-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MR. JUSTICE AMIT BANSAL

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

C.M.Nos.17048/2021 & 17049/2021(both for exemption)

1. Allowed, subject to all just exceptions and as per extant Rules.
2. The applications stand disposed of.

W.P.(C) 5503/2021 & C.M. No.17047/2021(for stay)

3. The petition impugns the order dated 17th May, 2021 of the Armed Forces Tribunal (AFT), Principal Bench, New Delhi, of, while admitting the OA 890/2021 preferred by the petitioner impugning the order dated 5th April, 2021 of his discharge from the respondents Indian Navy (on the ground of having got inducted into the respondents Indian Navy by playing fraud), dismissing the application of the petitioner for interim relief of stay of the discharge order, observing that “keeping in view the seriousness of

the allegations, we do not deem it appropriate at this stage to stay the discharge order”.

4. We have enquired from the counsel for the petitioner, how can there be an interim stay of the order of discharge of the petitioner from service inasmuch as the same cannot be undone in the event of the OA of the petitioner being ultimately dismissed; on the contrary, if the OA ultimately succeeds, the petitioner can be restored to the same position as would have been had the discharge order not been passed, monetarily as well as in terms of seniority.

5. The counsel for the petitioner contends that the discharge order has not been implemented as yet and thus the same status can be ordered to continue. It is also contended that the petitioner has a *prima facie* good case and the basic procedural requirements have not been fulfilled before passing the discharge order. It is yet further contended that if the petitioner is discharged, he will not be receiving his pay and other emoluments and the petitioner is a poor person who would find it difficult to survive without the emoluments. It is yet further stated that the father of the petitioner is ailing.

6. On enquiry, when the discharge order was/is to come in force, the counsel for the petitioner states that the discharge order does not give any date but has not been served on the petitioner as yet.

7. The counsel for the respondents Indian Navy appearing on advance notice states that the order could not be served on the petitioner since the petitioner has been on leave, claiming to be in quarantine.

8. As far as the other contentions of the counsel for the petitioner are concerned, though our sympathies are with the petitioner but we, in law are not empowered to pass an interim order, the effect whereof cannot be undone at the final stage. The Court, whenever passes an interim order, at the time of final adjudication is required to and ought to balance the equities flowing from the said interim order. Reference in this regard may be made to *Abhimanyoo Ram Vs. State of U.P.* (2008) 17 SCC 73, *Ramesh Chandra Sankla Vs. Vikram Cement* (2018) 14 SCC 58 and *Ruchika Cables Pvt. Ltd. Vs. The Secretary (Labour)* MANU/DE/1033/2010.

9. No answer is forthcoming to, how in the event of the OA being ultimately dismissed, the presence of the petitioner on the rolls of the respondents Indian Navy, after the date of the service of the order of discharge will be explained. Supreme Court, in *State of Haryana Vs. Suman Dutta* (2000) 10 SCC 311, has observed that by an interim order, if an employee is allowed to continue in service and then ultimately the writ petition is dismissed, then it would tantamount to usurpation of public office without any right to the same. Similarly, in *State of U.P. Vs. Sandeep Kumar Balmiki* (2009) 17 SCC 755, it was held that by an interim order, termination of employment could not be stayed as giving such a relief amounted to allowing the writ petition itself. In *Bhankra Byas Managing Board Vs. Suresh* (2009) 7 SCC 515 also, while setting aside an interim order of the High Court granting compassionate employment, the Supreme Court observed that the High Court was not justified in granting such interim order at the admission stage and although a decree had been passed against the appellant directing the appellant to make compassionate

appointment, but at the interim stage of the second appeal, the appellant could not be directed to appoint the respondent, on the statement of the respondent that he was ready to forego the past benefit if he was taken in service. Reference may also be made to the dicta of this Court in, *Air India Ltd. Vs. Aditya Beri* MANU/DE/2781/2012 (DB) and *The Co-operative Store Ltd., Superbazar Vs. Superbazar Karamchari Hitesh Sangathan* MANU/DE/5089/2012 (DB).

10. Notice may also be taken of the observations of the Supreme Court in *U.P. Junior Doctors' Action Committee Vs. B. Sheetal Nandwani* 1992 Supp (1) SCC 680, though in different facts. It was held to be a well-known rule of practice and procedure, that at interlocutory stage, a relief which was asked for and was available at the disposal of the matter, is not granted. The writ petitioners in the said case wanted admission into post-graduate course as the main relief in the writ petition. Supreme Court observed, that unless there was any special reason to be indicated in clear terms in an interlocutory order, as a rule no provisional admission should be granted and more so into technical courses. It was further held that grant of such a relief at the threshold creates a lot of difficulties and in a case where the petitioner ultimately loses in a case of this type, a very embarrassing situation crops up if he has by then read for two to three years, there is a claim of equity, on the plea that one cannot reverse the course of time.

11. We also find merit in the reason given by the AFT, of the seriousness of the ground on which the petitioner has been discharged, not entitling the petitioner to any interim relief. Supreme Court, in *U.P. Rajya Krishi Utpadan Mandi Parishad Vs. Sanjiv Rajan* 1993 Supp. (3) SSC 483 held

that when the charge is of moral turpitude, till the Court, after examining the entire records finds that the conclusion reached by the disciplinary authority is wrong, no stay of termination of employment should be granted.

12. No perversity is found in the impugned order of the AFT.

Dismissed.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

MAY 25, 2021

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