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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 5742/2021
ABTAR RAJ Petitioner
Through: Mr. S.S. Pandey, Adv.

versus

UNION OF INDIA AND ORS Respondents
Through: Mr. Aman Malik, SPC with Mr.
Akshat Singh, GP with Major Katoch
and Major Mahendra for respondents.

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

% **ORDER**
02.06.2021

[VIA VIDEO CONFERENCING]

CMs No.17996/2021, 17997/2021 and 17998/2021 (all for exemption).

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

W.P.(C) 5742/2021 & CM No.17995/2021 (for interim direction).

3. This petition, under Article 226 of the Constitution of India, impugns the order dated 24th May, 2021 of the Armed Forces Tribunal (AFT), Principal Bench, New Delhi, allowing Review Application No.10/2021 filed by the respondents Indian Army and recalling the order dated 1st February, 2021 allowing OA No.1353/2020 filed by the petitioner and posting the said OA for consideration on 26th July, 2021, after giving an opportunity to the respondents to file an additional affidavit.

4. The counsel for the respondents Indian Army along with Major Katoch and Major Mahendra of the respondents Indian Army, appear on advance notice.

5. We have heard the counsel for the petitioner at length.

6. It is the contention of the counsel for the petitioner, that (i) the review petition came up first before the AFT on 8th April, 2021 when AFT, on going through the record, did not *prima facie* find any case for review to be made out but on the request of the departmental representative, adjourned the matter to 12th April, 2021; (ii) on 12th April, 2021, after hearing arguments on the review application, orders were reserved; (iii) finally the impugned order dated 24th May, 2021 was passed, allowing the review application and recalling the earlier order allowing the OA of the petitioner; (iv) the review application was also accompanied with an application for condonation of delay in filing thereof; (v) the question, whether delay can be condoned by AFT, is pending before a larger Bench of AFT; however notwithstanding the same, AFT, vide the impugned order, condoned the delay and which could not have been condoned without awaiting the judgment of the larger Bench of AFT; (vi) the review application was allowed without issuing notice and without even giving an opportunity to the petitioner to file reply thereto; (vii) though the counsel for the petitioner wanted to file a reply, but was told that there was no need therefor since the review application was going to be dismissed; (viii) though the impugned order records that the arguments made by the counsel for the petitioner had been considered but a reading of the impugned order shows that not a single argument of the counsel for the petitioner is recorded or dealt with; and, (ix) while allowing the review, certain observations have been made and

findings given and which, according to the petitioner, are erroneous in law and could not have been returned and the said findings/observations make the hearing of the OA scheduled on 26th July, 2021 a formality, inasmuch as in view of the said observations and findings, the petitioner cannot be granted any relief in the O.A.; it is argued that on the one hand the petitioner, for the reason of having not been given opportunity to file reply to the review application, had no occasion to meet the pleas in the review application, and on the other hand the petitioner, in view of the said findings/observations in the impugned order and with which AFT, in adjudicating the O.A. consider itself bound, would have no opportunity to meet the said pleas in the review application even during the hearing of the O.A.

7. Needles to state, Major Mahendra of the respondents Indian Army present during the hearing today and who was admittedly present during the hearing before AFT also, controverts the contentions aforesaid of the counsel for the petitioner.

8. During the hearing it has also been informed that the O.A. aforesaid was filed by the petitioner seeking a promotion; the petitioner is due to superannuate on 31st October, 2021 and though in accordance with the earlier order allowing the O.A, would have been entitled to the promotion but owing to the order allowing the OA having been recalled, would now be deprived of promotion also. Order restraining filling up of the vacancy post, is sought.

9. We have enquired from the counsel for the petitioner, whether the promotion would have enhanced the age of superannuation of the petitioner.

10. The answer is in the negative.

11. If that is so, we are unable to see how an order restraining the respondents Indian Army from filling up the vacancy post, is called for, inasmuch as the petitioner, if ultimately found entitled to promotion, can notwithstanding his superannuation, be granted the said notional promotion and all consequential benefits thereof.

12. We have considered the aforesaid state of affairs. The matter is still at large before the AFT and the OA is scheduled for hearing on 26th July, 2021. We are of the opinion that no purpose will be served in entertaining this petition and issuing notice thereof and all of which would also delay the hearing of the OA by the AFT. The petitioner is close to his superannuation. It is deemed apposite that the matter comes to a rest at the earliest. The same can be achieved only by allowing the O.A. of the petitioner to be heard and decided at the earliest.

13. As far as the apprehension of the counsel for the petitioner, that the hearing of the O.A. is rendered a mere formality in view of the findings/observations in the impugned order which are alleged to have been made/returned without the petitioner having had a proper opportunity, is concerned, the same can be allayed by, without adjudicating whether the petitioner, in opposing the review was deprived of due opportunity, directing that the AFT, while hearing and adjudicating the O.A. aforesaid of the petitioner, shall not be bound by the observations/findings returned in the impugned order and the counsel for the petitioner shall be entitled to argue on all aspects before the AFT including that Section 9 of Territorial Army Act, 1948 and letter dated 28th January, 2011 have no application to the matter in controversy, and AFT shall decide all such arguments afresh, on their own merits.

14. The petition is thus disposed of, with a request to AFT to, while adjudicating O.A. No.1353/2020, not consider itself bound by any observations/findings in law or on facts in the impugned order dated 24th May, 2021 allowing the review application and to decide all issues of law and fact arising for adjudication, uninfluenced by the said findings and observations.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

JUNE 2, 2021
‘pp’