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

+ W.P.(C) 6204/2021

NB SUB MURALIDHARAN B

..... Petitioner

Through: Mr. Ajit Kakkar with Mr. Puru
Mudgal, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Harish Vaidyanathan Shankar,
CGSC with Mr. Sahaj Garg (GP) &
Major Arjun Katoch.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

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07.07.2021

[VIA VIDEO CONFERENCING]

C.M.Nos. 19655/2021 & 19656/2021 (both for exemption)

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

W.P.(C) 6204/2021 & C.M.No. 19654/2021 (for stay)

3. The petitioner, a Naib Subedar in the respondents Indian Army, has filed this petition (i) seeking direction to the respondents Indian Army to place on record the order dated 29th June, 2021 passed by the General Court Martial convened against the petitioner; (ii) seeking declaration that the charges levelled against the petitioner vide charge sheet dated 24th May, 2021 are time-barred; (iii) impugning the order dated 25th May, 2021 convening the General Court Martial, the charge sheet dated 24th May, 2021 and the order dated 29th June, 2021 aforesaid; and, (iv) seeking direction for

termination of the General Court Martial proceedings against the petitioner.

4. On the complaint made in April, 2016 by a Havildar in the respondents Indian Army, a Court of Inquiry was constituted against the petitioner on 3rd June, 2016 and the proceedings whereof commenced on 20th April, 2017. The Court of Inquiry concluded its proceedings in May, 2017. On 25th May, 2021, a General Court Martial was convened against the petitioner.

5. The petitioner filed MA No.930/2021 in OA No.1258/2020 filed by him and pending before the Armed Forces Tribunal (AFT), Principal Bench, New Delhi, averring that the General Court Martial convened against the petitioner was barred by time. The counsel for the petitioner, on enquiry, states that the OA aforesaid was filed by the petitioner, impugning another order and the petitioner, in the said pending OA, filed the MA aforesaid. The said MA No.930/2021 was disposed of by the AFT vide order dated 28th May, 2021, observing that the question whether the proceedings initiated against the petitioner were barred by limitation as contemplated under Section 122 of the Army Act, 1950, was a mixed question of law and facts and there was thus no reason to interfere with the General Court Martial proceedings against the petitioner.

6. The petitioner thereafter raised the same issue in the General Court Martial proceedings and which issue is claimed to have been decided against the petitioner vide order dated 29th June, 2021 of the General Court Martial; it is the case of the petitioner that the copy of the order dated 29th June, 2021 has not been made available to him.

7. The petitioner, in this petition has not impugned the order dated 28th May, 2021 of the AFT, holding the plea of limitation raised by the petitioner

to be a mixed plea of law and facts, not adjudicable at the threshold.

8. We have thus enquired from the counsel for the petitioner, how this petition raising the same plea as raised by the petitioner before the AFT and which did not meet with any success and which order has attained finality, is maintainable.

9. The counsel for the petitioner states that MA No.930/2021 was preferred impugning the order dated 25th May, 2021 convening the General Court Martial against the petitioner; on the contrary this petition has been preferred impugning the order dated 29th June, 2021 of the General Court Martial rejecting the plea of limitation raised before it.

10. Be that as it may, the fact remains that the petitioner raised the plea of limitation in the General Court Martial proceedings also at the threshold; once AFT, vide order dated 28th May, 2021 has held the plea of limitation to be entailing mixed question of law and facts and the said order of AFT has not been challenged, not even in this petition, this Court cannot in a challenge to the order if any dated 29th June, 2021, hold contrary to the order dated 28th May, 2021 of the AFT.

11. Moreover, even if the petitioner were to be entitled to a second round against the order dated 29th June, 2021, the jurisdiction with respect thereto also would be of the AFT and the petitioner is not entitled to approach this Court.

12. The counsel for the petitioner does not controvert that the jurisdiction would be of AFT but states that since the AFT has already once opined against the petitioner, the petitioner withdraws this petition with liberty to file a fresh petition impugning the order dated 28th May, 2021 of the AFT.

13. The counsel for the respondents Indian Army appears on advance

notice.

14. Leaving all arguments open to the respondents Indian Army, the petition is disposed of as withdrawn with liberty to the petitioner to, in accordance with law, file a fresh petition impugning the order dated 28th May, 2021 of the AFT on MA No.930/2021 in OA No.1258/2020.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

JULY 7, 2021

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