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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1160 OF 2022**

NR Kulkarni (Retd)

...Petitioner

Versus

Union of India, Ministry of Defence, through the
Secretary & Ors

...Respondents

**Mr Sudanshu S Pandey, with Chetan S Damre, for the Petitioner.
Mr Adavit Sethna, i/b DP Singh, for Respondent No. 1-UOI.**

**CORAM G.S. Patel &
 Madhav J. Jamdar, JJ.
DATED: 8th February 2022**

PC:-

1. We see no reason to interfere in exercise of our Writ Jurisdiction of Article 226 of the Constitution of India. The Petitioner, a retired officer of the Indian Army, challenges an order of 26th February 2021 of the Armed Forces Tribunal Regional Bench at Mumbai in OA No. 43 of 2021 filed by the Petitioner.

2. Briefly, the background is that the Petitioner served with the Indian Army in the Military Farms. He retired with the rank of colonel in 2019. During the period 2015 to 2017 while he was the director of the Military Farms, he was part of a process of regularization of casual employees. For reasons that are not

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immediately germane, a Court of inquiry was initiated resulting in disciplinary action against the Petitioner in regard to this regularization.

3. Before the Armed Forces Tribunal, the Petitioner challenged the orders dated 7th January 2021 and 14th January 2021 by which these disciplinary proceedings were initiated against him. This was not the Petitioner's first attempt in this regard. He had earlier invoked the jurisdiction of the tribunal in OA No. 950 of 2020. After a full hearing on 31st July 2020, the tribunal noticed that the Petitioner's grievance was in regard to invoking the provisions of Section 123 of the Army Act 1950, essentially to say that Section 123 of the Army Act was wrongly invoked, and seeking a quashing.

4. Once that IA was disposed of, the Applicant filed a fresh IA after summary evidence and just before trial commenced. He sought that the findings recorded and responsibility ascribed to the Petitioner be set aside as unsustainable. He also sought to quash further proceedings in that regard. After a detailed consideration, in paragraph 11 of the order (at page 158 of the Petition), the tribunal held that now that the summary of evidence was over and the trial was about to commence the applicant wanted the tribunal to scrutinize the entire material on record brought before the Court of inquiry and to exonerate the Petitioners on merits by holding that the allegations levelled against him were such that no disciplinary proceedings could be sustained. The tribunal held — and in our view completely correctly — that this was entirely impermissible. It went on to hold that it could not step into the shoes of the authorities to conduct the trial and thereafter quash the proceedings

on merits. Unless statutory provisions were found to be violated, the tribunal could not interfere.

5. We are precisely in same position.

6. We find no infirmity in the order of the tribunal made on 26th February 2021. We see no merit in the Petition. It is rejected. There will be no order as to costs.

7. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)