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

+ **W.P.(C) 1364/2022**

BRIG SK GUPTA RETD MR04965-P Petitioner
Through **Mr.Ajit Kakkar, Advocate.**

versus

UNION OF INDIA & ORS. Respondents
Through **Mr.Anurag Ahluwalia, CGSC with**
Mr.Danish Faraz Khan and
Mr.Rishab Narayan, Advocates.

% **Date of Decision: 03rd February, 2022**

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

MANMOHAN, J (ORAL)

C.M.No.3977/2022

Exemption allowed, subject to all just exceptions.

Accordingly, the applications stand disposed of.

W.P.(C) 1364/2022 & C.M.No.3976/2022

1. The matter has been heard by way of video conferencing.
2. Present writ petition has been filed challenging the order dated 18th January, 2022 passed by learned Armed Forces Tribunal (AFT) in M.A No.5/2021 in O.A. No. 1135/2019 whereby the AFT dismissed the Petitioner's application challenging the conveying letter dated 30th December 2021. Petitioner also challenges the attachment order dated 16th



August 2021, which allegedly was never served upon the Petitioner, and the letter dated 30th December, 2021 by which the petitioner was conveyed of the passing of the attachment order dated 16th December 2021. Petitioner further challenges the apprehension roll dated 06th January 2022 seeking a direction to declare the same to be illegal, without any authority of law and, thus quash and set aside the same. The petitioner also seeks a direction to the Respondents to pay Rs. 10,00,000/- as damages to the Petitioner for violation of his Fundamental Rights as guaranteed under Article 21 of the Constitution of India.

3. Learned counsel for the Petitioner states that vide impugned order dated 30th December 2021, the Respondents have informed the Petitioner about his attachment to RVC Centre & College, Meerut Cantt., for completion of disciplinary proceedings, which were initiated vide the impugned order dated 16th August 2021. He states that vide the impugned apprehension roll dated 06th January 2022, the Respondents have ordered coercive apprehension of the Petitioner with the aid of civil police officers.

4. He states that the Petitioner having been granted pre-mature retirement w.e.f. 15th October, 2018 ceased to be amenable to jurisdiction of the Army Act and thus the Petitioner cannot be held liable to face trial or other proceedings after a period of three years from the date of his retirement. He also states that the alleged offences for which the Petitioner is to be proceeded against had already become time barred because the alleged offence had admittedly come to the knowledge of the Respondents on 31st May, 2018 and the trial had not commenced even till 31st May, 2021. In support of his submission, he relies upon Sections 122 and 123 of the Army Act, 1950.



5. He contends that it is the Petitioner who had exposed the scam with regard to purchase of medicines and medical products/equipments at the Base Hospital, Lucknow and it is the Petitioner who had initiated the first inquiry / investigation into the matter. He emphasises that the Petitioner's retirement was not a case of routine superannuation but a case of premature retirement. It is his contention that if there was any disciplinary proceeding pending against the Petitioner on the date of his superannuation, his premature retirement application would not have been approved by the respondents on 16th August, 2018.

6. He states that the issue of limitation is an issue of jurisdiction and, therefore, it must be decided by this Court.

7. Mr. Anurag Ahluwalia, learned CGSC refers to and relies upon Rules 51 and 53 of the Army Rules, 1954 to submit that the plea of limitation can and should be raised before the Authority conducting the court martial proceedings. He also points out that in the present case, only an interim application has been disposed of by the Tribunal and the Tribunal is still seized of the main O.A.

8. Mr. Ahluwalia further states that though GCM was convened on 17th January, 2022, yet the same was adjourned as the Petitioner had not appeared in the said proceedings. He also states that GCM is now scheduled to be held on 8th February, 2022 and the Petitioner must undertake to join the said proceeding.

9. However, learned counsel for the Petitioner states that as the Court Martial proceedings against the Petitioner are without jurisdiction, he is not legally bound to appear before them.



10. Having heard learned counsel for the parties, this Court is of the view that the primary charge against the Petitioner is that, at the time the Petitioner was posted as Commandant at the Base Hospital, Lucknow, he indented medicines worth Rs.3 crores approximately for heart related ailments, when the Hospital did not have a Cardiology department and omitted to issue directions for return of unwanted medical stores during their validity period.

11. This Court is of the *prima facie* view that the plea of limitation in the present case is a mixed question of fact and law as Sections 122(1)(b) and 122(1)(c) of the Army Act, 1950 provide for exception to limitation and it is the case of the Respondents that the said sub Sections are attracted to the present case. Further, Rules 51 and 53 of the Army Rules, 1954 gives an alternative effective remedy to the Petitioner to raise this issue during the Trial. The relevant portion of Rules 51 and 53 of the Army Rules, 1954 are reproduced hereinbelow:-

“51. Special plea to the jurisdiction.

(1) The accused, before pleading to a charge, may offer a special plea to the general jurisdiction of the court, and if he does so, and the court consider that anything stated in such plea shows that the court has no jurisdiction it shall receive any evidence offered in support, together with any evidence officered by the prosecutor in disproof or qualification thereof, and any address by or on behalf of the accused and reply by the prosecutor in reference thereto.

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53. Plea in bar.

(1) The accused, at the time of his general plea of “Guilty” or “Not Guilty” to a charge for an offence, may offer a plea in bar of trial on the ground that :-



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(c) the period of limitation for trial as laid down in section 122 has expired.”

12. Moreover, in a similar case of ***Union of India & Ors. vs. Lieutenant Colonel Dharamvir Singh, (2019) 15 SCC 793***, when a writ petition was entertained by the High Court and the impugned order was stayed, the Supreme Court allowed the SLP filed by Union of India and observed as under:-

“The assumption of jurisdiction by the High Court in a Writ Petition under Article 226 of the Constitution was misconceived. We are also of the view that having regard to the definition of the expression “service matters” in Section 3(o) of the Armed Forces Tribunal Act 2007 and the jurisdiction of the Armed Forces Tribunal under Section 14, such a Writ Petition ought not to have been entertained by the High Court. The learned Single Judge should have exercised caution and ought to have been circumspect before he proceeded to stay an order of attachment. Such pre-emptive judicial strikes are unwarranted. The course of action followed by the Single Judge has serious repercussions for the maintenance of discipline in the Army. Discipline is the essence of the organisation and structure of an Armed Force.”

13. This Court is also of the *prima facie* view that there is no admission in the charge-sheet that the Respondents learnt about the Petitioner’s alleged involvement on 31st May, 2018. Even if such an averment has been made, this Court is of the view that the Respondents can certainly explain the alleged admission before the adjudicating authority and if the explanation is not found tenable, then consequences will follow.



14. Moreover, in the present case, O.A. No. 1135/2019 filed by the Petitioner, in which the plea of lack of jurisdiction has been raised, is still pending adjudication before the AFT. Consequently, this Court finds no ground to interfere with the interim order passed by the Tribunal.

15. Further, the power to attach a person, against whom disciplinary proceedings is contemplated, is enshrined in the Army Instruction No. 30 of 1986 and *prima facie* the attachment is attracted in the present case. The attachment of a charged personnel is done with the objective to facilitate an independent and impartial inquiry into the matter. After all, it is essential to ensure that the delinquent does not influence the witnesses or get an opportunity to tamper with the evidence or evade the proceedings contemplated against him.

16. In the present case, the Petitioner was issued a letter dated 30th December, 2021 to report to the RVC centre on 3rd January, 2022. Even though the Petitioner accepted the delivery of the letter, he failed to report to the RVC Centre on the 3rd January, 2022. Since the proceeding contemplated against the Petitioner is likely to get time barred and the Petitioner is evading his presence, this Court is of the view that the apprehension roll dated 06th January, 2022 was rightly called for.

17. Keeping in view the aforesaid, the present writ petition along with pending application is dismissed.

MANMOHAN, J

NAVIN CHAWLA, J

FEBRUARY 03, 2022
KA/AS