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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: August 30, 2022***+ **W.P.(C) 12512/2022****CPL UMESH AMETA NO.963200S** PetitionerThrough: **Mr. Bharat Singh, Advocate**

Versus

UNION OF INDIA AND ORS. RespondentsThrough: **Ms. Suman Chauhan, CGSC,
Ms. Samiksha, Advocate with
Mr. Gokul Sharma, Government
Pleader****CORAM:****HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE SAURABH BANERJEE****JUDGMENT** (oral)**CM APPLN. 37804/2022**

1. Allowed subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 12512/2022 & CM APPLN. 37803/2022 (for interim stay)

3. Being aggrieved of order dated 24.08.2022 passed by the learned Arms Forces Tribunal, Principal Bench, New Delhi in O.A. No. 1755/2022, vide which petitioner's application being M.A. No. 2346/2022 seeking interim relief has been dismissed, the present petition has been preferred by the petitioner, *inter alia* seeking the following reliefs:-



A. *Issue a Writ, Order or Direction in Certiorari/Mandamus by quashing and setting aside the impugned order dated 24.08.2022 passed by the Ld AFT (PB) to the extent of rejection of grant of interim relief to the petitioner as prayed in the OA 1755/2022;*

B. *Issue a Writ, Order or Direction in the nature of Mandamus commanding the petitioner not to discharge from service in furtherance of Court of Inquiry dated 25.05.2021;*

C. *Issue a writ order or direction in the nature of mandamus commanding the respondents to stay the effect and operation of the impugned speaking Order issued vide Air;*

D. *Issue a writ order or direction in the nature of mandamus commanding the respondents not to discharge the petitioner during the pendency of the instant writ petition.*

4. Vide O.A. No. 1755/2022, petitioner herein has challenged the discharge order dated 03.08.2022 passed by the respondents whereunder he shall stand discharged from service w.e.f. 31.08.2022 pursuant to order dated 29.07.2022 passed by the Air (HQ) VB, Rafi Marg, as his services were no longer required being unsuitable for retention in Indian Air Force.

5. The allegations levelled against the petitioner in the speaking order dated 29.07.2022 passed by the the Air (HQ) VB, Rafi Marg are as under:-

“(a) While posted at HQ DSI (WZ) of 3 Wg Air Force Station Palam, during the period from 20 Jan 20 to May 2021, displayed indecent and scandalous behaviour and indulged in unnatural sexual activities with other airmen wherein you established sexual relationship with WO DP Kaushik by making oral and anal sex.

(b) During the period from 20 Jan 20 to May 21, while posted at HQ DSI (WZ) of 3 Wg Air Force Station



Palam, used personal ICT device (smart phone, make-Nokia 8.1 bearing IMIE No. PNXID18120902253 with Airtel mobile number 7734818622 & Jio mobile number 7002083430) with internet connection on Jio sim-card without obtaining valid and requisite permission in violation of order number 87/2020 of Station Standing Order dated 31 Jul 2020 issued under the signature of AOC 3 Wg, the orders issued under Chapter 23 of IAP 3903 on the subject Personal ICT Devices Management and the policy circulated by Air HQ/S 21700/39/IEW (IW)/BM IV dated 18 May 15.

(c) While posted at HQ DSI (WZ) of 3 Wg Air Force Station Palam, during the period from 20 Jan 20 to May 2021 violated the policies of IT security as stipulated in Chapter 23 Para 2 (a) (iii) of IAP 3903 of 2018 wherein service related documents like MT Vehicle state, MT Run timing, personal application, allotment letter of TMQ, etc and service precis (Auto Tech Trade) of "Restricted" classification were found in your smart phone. Photos of Witness No. 3 and other air warriors in uniform were also found stored in your Smartphone.

(d) You were found to be using smart phone in unauthorized area on 13 Apr 21 in office complex which is a violation of Chapter 23 Para 2 (a) (vii) of IAP 3903 of 2018 and multiple screenshots of AFNET desktop screen were found in your smart phone details of which are available in Forensic report.

(e) While posted at HQ DSI (WZ) of 3 Wg Air Force Station Palam, during the period from 20 Jan 20 to May 2021, displayed disgraceful conduct with indecent behavior and indulged in activities of obscene and undesirable nature as listed below:-

(i) Sharing pornographic material through WhatsApp chat with other air warriors.



- (ii) *Actively involved in online Cricket betting sites like Dream 11 & Ballebazi.*
- (iii) *Found to be actively involved in use of various banned sites and apps like dating sites and escort services.*
- (iv) *Found to be a member of numerous Telegram groups involved in male escort services.*

(f) *During the same period while posted at HQ DSI (WZ), found to be an active member of many WhatsApp groups with other service personnel which is a violation of Cyber Security Advisory on usage of Social Media in IAF as published vide Entry no. 12 of SRO SI. no. 87/2020 dated 31 Jul 20.*

6. Vide impugned order dated 24.08.2022, petitioner's prayer for stay of discharge order dated 03.08.2022 has been rejected by the learned Tribunal while observing as under:-

"Taking note of the allegations and the facts of the case as contained in the show cause notice and various other aspects of the matter, for the present, we are not inclined to stay the discharge of the applicant. Even though learned counsel for the applicant tried to argue that the for the discharge are not correct and for the allegations made in the show notice, the applicant may be guilty of an offence under Section 377 of the Indian Penal Code, but as the Hon'ble Supreme Court, in the case of Suresh Kumar Koushal and another v. Naz Foundation and others (2014) 1 SCC 1, has held that the offence under Section 377 IPC is no more criminal in nature and the action is said to be unsustainable. Learned counsel for the reasons cause respondents points out that even though the offence may not be punishable as a criminal offence, but it amounts to an act unbecoming of an officer in uniform wording in the force and this1 issue



has to be deliberated upon. In the facts and circumstances of the case, we are of the view that the applicant has not established a prima facie case that balance of convenience is in his favour and that he would suffer irreparable loss, if stay is not granted in his favour. Therefore, for the present we are not inclined to grant stay to the applicant. However, his discharge would be subject to the final outcome of this O.A. ”

7. The challenge to the aforesaid observations passed by the learned Tribunal vide impugned order dated 24.08.2022 by the petitioner is on the ground that the impugned order is illegal and unjust, as Section 377 IPC has been decriminalized by the Hon'ble Supreme Court in ***Navtej Singh Johar Vs. UOI*** (2018) 10 SCC 12. Moreover, admission/confession of the petitioner was obtained under threat, force and manhandling at the hands of respondents, and thereby not admissible under the provisions of Section 25 of the Indian Evidence Act.

8. During the course of hearing, learned counsel appearing on behalf of petitioner submitted that no witness has been produced by the respondents to testify the alleged acts and also no medical examination was done. Further, no MLC and FSL report pertaining to serology or anatomy has been produced by the respondents to corroborate the alleged offence. Learned counsel for petitioner also submits that court of inquiry conducted was in gross violation of the procedure prescribed and all these grounds have not been taken into consideration by the learned Tribunal while refusing to grant the interim order and so, the impugned order dated 24.08.2022 deserves to be set aside and also, order dated 03.08.2022 passed by the respondents discharging petitioner from service w.e.f. 31.08.2022



deserves to be stayed.

9. Upon hearing learned counsel for the parties and on perusal of material placed on record, we find that the allegations levelled against the petitioner are serious in nature, pursuant to which Show Cause Notice vide Air HQ/C 23381/1981/Disip dated 24.12.2022 was issued against him. In reply to the aforesaid Show Cause Notice, petitioner had submitted reply dated 11.02.2022 wherein he had admitted his guilt and sought apology. Pursuant to court of inquiry, a Speaking Order dated 29.07.2022 was passed by the competent authority, vide which petitioner was directed to be discharged from service under Rule 15(2) (g) (ii) of the Air Force Rules, 1969 under the clause *“his services no longer required- Unsuitable for retention in Air Force”*. Subsequently, order dated 03.08.2022 was passed by the discharging petitioner from service w.e.f. 31.08.2022.

10. Relevantly, the aforesaid order dated 03.08.2022 is sub-judice before the Arms Forces Tribunal, who has refused to grant stay thereof on the basis of material placed before it and the said matter is now listed for 31.10.2022 before the learned Tribunal. We find that the grounds taken by the petitioner before this Court challenging his discharge from service, are already under consideration before the learned Tribunal, wherein notice has already been issued to respondents. Moreover, the order dated 24.08.2022 passed by the learned tribunal refusing to grant stay to petitioner is a speaking order, which does not call for any interference by this Court. Also, the learned Tribunal has held that petitioner's discharge from service shall be subject to outcome of the appeal, which meets the interest of justice.



NEUTRAL CITATION NO: 2022/DHC/003375

11. With aforesaid observations, finding no merit in the present petition, it is dismissed.

(SURESH KUMAR KAIT)
JUDGE

(SAURABH BANERJEE)
JUDGE

AUGUST 30, 2022

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