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

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Date of decision: 26th May, 2023

+ W.P.(C) 14385/2022

IC-76585M MAJOR NISHANT KAUSHIK Petitioner

Through: Mr. Shree Prakash Sinha, Mr. Anand
Kumar, Mr. Rakesh Mishra and Mr.
Akshit Anand, Advocates

versus

UNION OF INDIA & ORS Respondents

Through: Mr. Sushil Kumar Pandey, Advocate
with Major Partho Katyayan

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T (oral)

REVIEW PET. 138/2023

CM APPL. 24841/2023 (for stay)

CM APPL. 24842/2023 (for delay in filing review petition)

1. Vide this review petition, the review petitioner is seeking review of judgment and order dated 11.10.2022 passed by this Court in W. P. (C) No.14385/2022.

2. It is not in dispute that vide impugned judgment dated 11.10.2022, the writ petition filed by review petitioner was dismissed on the ground that this Court has no jurisdiction to entertain the said petition and the same was

disposed of by giving liberty to petitioner to move an appropriate application under Section 32 of the Armed Forces Tribunal Act, 2007. Consequently, the review petitioner preferred an S.L.P.(C) 84/2023 before the Hon'ble Supreme Court, however, the same was dismissed as withdrawn without seeking any liberty. Thereafter, the Hon'ble Supreme Court has passed judgment dated 21.03.2023 in the case of ***Union of India & Ors. vs. Parashotam Dass : Civil Appeal No.447/2023*** and in view of para 33 of said judgment, this Court has issued notices in various writ petitions which are pending for adjudication.

3. In the present case, after passing of order by learned AFT, neither the writ petition before this Court nor the Special Leave Petition before the Hon'ble Supreme Court was decided on merits.

4. The question before this Court is as to whether after the SLP before Hon'ble Supreme Court was dismissed, a Review Petition seeking review of order dated 11.10.2022 before this Court is maintainable.

5. Learned counsel for respondents, who is appearing on advance notice, submits that though review petition is not maintainable before this Court, however, petitioner may raise issue(s) before the Learned Court Martial Court and the said Court may consider the same on merits, as per law.

6. Learned counsel for petitioner has disputed the submission of learned counsel for respondents by submitting that learned Court Martial Court may get influenced by the order passed by Hon'ble Supreme Court in Special Leave Petition, this Court in Writ Petition and learned AFT.

7. Since the case of petitioner has not been decided on merits either by Hon'ble Supreme Court or by this Court, therefore, in view of para 33 of judgment passed by the Hon'ble Supreme Court in the case of ***Union of***

India & Ors. vs. Parashotam Dass, a litigant has a right to two reviews whereas in the present case, the order is passed by learned AFT and no further order has been passed on merits either by this Court or by Hon'ble Supreme Court.

8. Therefore, without expressing any opinion on the maintainability of present review petition, we hereby dispose of the same while giving liberty to the review petitioner to raise issue(s) before the learned Court Martial Court, as per law.

9. It is made clear that learned Court Martial Court shall not get influenced by the observations made in order dated 10.08.2022 passed by learned AFT, judgment dated 11.10.2022 passed by this Court in W. P. (C) No.14385/2022 and order dated 13.01.2023 passed by Hon'ble Supreme Court in S.L.P.(C) 84/2023.

10. It is further made clear that the issue(s) raised before learned AFT shall remain open before the learned Court Martial Court.

11. Pending applications also stand disposed of.

Copy of order be given *dasti* under signatures of Court Master.

(SURESH KUMAR KAIT)
JUDGE

(SAURABH BANERJEE)
JUDGE

MAY 26, 2023/rk

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