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

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Date of decision: November 03, 2022

+ W.P.(C) 15180/2022 & CMs No.46970-71/2022
NR-19681H EX LT COL POONAM
CHATURVEDI

..... Petitioner

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

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Shoumendu Mukherji, SPC with
Ms. Megha Sharma and Mr. Sahaj
Garg (GP) for R-1 to R-4
Major Partho Katyayan for UOI

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T (oral)

1. Vide the present petition, petitioner while impugning the final order dated 18.02.2022 passed by the Armed Forces Tribunal¹ in O.A. No. 1024/2018, seeks the following reliefs:-

"I. Call for the records and set-aside the impugned order dated 18/02/2022 (Annexure-P/1) passed by the Learned Tribunal in O.A. No. 1024/2018, and

II. Set-aside the order dated 24/07/2017 (Annexure-P/25) passed by respondent No.1 through which petitioner was dismissed from service and consequently, reinstate her in service, and

¹Hereinafter referred as "AFT"

III. Grant all consequential benefits including salary etc. to the petitioner”

2. A similar writ petition, being W.P.(C) 14385/2022 titled ***Nishant Kaushik v. Union of India***² was filed impugning an earlier final decision passed by the AFT seeking similar reliefs. After hearing the learned counsel for petitioner therein, who, incidentally happens to be the same in the present petition, this Court vide order dated 11.10.2022 dismissed the same as not maintainable in the following terms:-

“5. As such, according to us all final decisions or orders passed by the Tribunal can solely be challenged by an aggrieved party before the Hon'ble Supreme Court under Section 30 of the Act and not before the High Court(s). The High Court is merely playing the role in a supervisory jurisdiction rather than sitting as a Court of appeal over such final decisions or orders passed by the Tribunal. We are fortified with the findings of a Coordinate Bench of this Court in Wing Commander Shyam Naithani v. Union of India, 2022 SCC OnLine Del 769 wherein it has been held as under:—

“48. However, the Writ Court while examining the judgment/order passed by the Tribunal, will exercise the power of judicial review which means that the Court shall examine the decision-making process and interfere only for correcting errors of jurisdiction or errors apparent on the face of record or if the Tribunal acts illegally. (See: Hari Vishnu Kamath (supra); Surya Dev Rai (supra) and Rajendra Diwan v. Pradeep Kumar Ranibala (2019) 20 SCC 143.)

49. This Court would like to emphasise, with all the power that it commands, that judicial restraint should be exercised when the reasons that a tribunal gives for its decision are being examined. Further, the writ jurisdiction of High Court cannot be exercised “in the cloak of an appeal in disguise”. (See: Rajendra Diwan v. Pradeep Kumar Ranibala, (2019) 20 SCC 143).”

6. As apparent therefrom, the scope of an appeal from a final decision or order of the Tribunal before the High Court is extremely limited and is restricted to the power of judicial review, which is to be exercised only when it is examining the decision-making process or when it is to interfere only for correcting the errors of jurisdiction or

²2022 SCC OnLine Del 3431

when it is for correcting errors apparent on the face of record or when the Tribunal acts illegally. Therefore, ordinarily no appeal from a final decision or order of the Tribunal can lie before the High Court.

3. As noted hereinabove, the petitioner in the present writ petition is also seeking similar reliefs and the situation is no different from that in ***Nishant Kaushik(supra)***. The petitioner has been unable to make out any case which falls within the scope identified in para 6 of ***Nishant Kaushik(supra)***.

4. Learned counsel for petitioner, relying upon the judgement of the Hon'ble Supreme Court in ***Balkrishna Ram v. Union of India***³ contends that this Court has the jurisdiction to try and entertain the present appeal and in fact all appeals arising from the final decision of the AFT. Relevant paras of ***Balkrishna Ram(supra)*** relied upon by counsel for petitioner are as under:-

13. What this Court in Shri Kant Sharma case [Union of India v. Shri Kant Sharma, (2015) 6 SCC 773 : (2015) 2 SCC (L&S) 386] held was that though the power of the High Court under Article 226 of the Constitution is a basic essential feature of the Constitution which cannot be taken away, the High Court should not entertain a petition under Article 226 of the Constitution if any other effective alternative remedy is available to the aggrieved person or the statute, under which the action complained of has been taken, itself contains a maxim for redressal of grievance. We have our doubt, with regard to the correctness of Directions (iii) and (iv) of the judgment, since in our opinion it runs counter to the judgment rendered by the Constitution Bench

14. It would be pertinent to add that the principle that the High Court should not exercise its extraordinary writ jurisdiction when an efficacious alternative remedy is available, is a rule of prudence and not a rule of law. The writ courts normally refrain from exercising their extraordinary power if the petitioner has an alternative efficacious remedy. The existence of such remedy however does not mean that the jurisdiction of the High Court is ousted. At the same time, it is a well settled principle that such jurisdiction should not be exercised when there is an alternative remedy available [Union of

³(2020) 2 SCC 442

India v. T.R. Varma, AIR 1957 SC 882]. The rule of alternative remedy is a rule of discretion and not a rule of jurisdiction. Merely because the Court may not exercise its discretion, is not a ground to hold that it has no jurisdiction. There may be cases where the High Court would be justified in exercising its writ jurisdiction because of some glaring illegality committed by AFT. One must also remember that the alternative remedy must be efficacious and in case of a Non-Commissioned Officer (NCO), or a Junior Commissioned Officer (JCO); to expect such a person to approach the Supreme Court in every case may not be justified. It is extremely difficult and beyond the monetary reach of an ordinary litigant to approach the Supreme Court. Therefore, it will be for the High Court to decide in the peculiar facts and circumstances of each case whether it should exercise its extraordinary writ jurisdiction or not. There cannot be a blanket ban on the exercise of such jurisdiction because that would effectively mean that the writ court is denuded of its jurisdiction to entertain such writ petitions which is not the law laid down in L. Chandra Kumar [L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577] .

15. It is clear that the intention of the Court was not to hold that the Tribunal is a substitute of the High Court insofar as its writ jurisdiction is concerned because that is specifically excluded under Section 14(1) of the Act. We cannot read this one sentence out of context. It is true that proceedings on the original side even in exercise of writ jurisdiction are to be transferred to the Tribunal for decision by AFT because the original jurisdiction now vests with AFT. This however, does not mean that AFT can exercise all the powers of the High Court”

5. According to us, the judgment in **Balkrishna Ram(supra)** is not applicable to the facts of the present petition as a bare perusal of the same reveals that the Hon’ble Supreme Court therein was dealing with the issue involving the preliminary stage, i.e., filing of a fresh petition and with the issue qua powers of a High Court under *Article 226* of The Constitution of India and with the issue of maintainability of a writ petition before a High Court when an efficacious alternative remedy is available whereas this Court is dealing with a case involving the secondary stage, i.e. filing of an appeal.

6. Further, as held therein, it is left for a High Court to decide in the peculiar facts and circumstances of each case whether it should exercise its extraordinary writ jurisdiction to entertain such writ petitions. The present is not such a case and the law laid down in ***Balkrishna Ram(supra)*** will also not come to the aid of petitioner herein. Also, having already laid down so in ***Nishant Kaushik(supra)***, there is no reason to hold contrary thereto as this Court has observed therein what has been laid down by the Hon'ble Supreme Court in ***Balkrishna Ram(supra)***.

7. Moreover, the law laid down in ***Balkrishna Ram(supra)*** is in the context of a High Court exercising its extraordinary writ jurisdiction when an efficacious alternative remedy is available. In our concerned view, the same is not applicable to the facts of the present case in view of the specific provisions like *Sections 30 and 31* of the Armed Forces Tribunal Act, 2007⁴ being the only remedy available for challenging the final decision of the AFT, as has already been held by this Court in ***Nishant Kaushik(supra)***.

8. Admittedly, pursuant to the final decision dated 18.02.2022 of the AFT, petitioner had filed an appropriate application under *Section 31* of the Act seeking leave to appeal before the Hon'ble Supreme Court in terms of the lawful procedure, however, the same has been dismissed vide order dated 23.03.2022 passed by the AFT. Having taken recourse to the remedy under *Section 31* of the Act once and the petitioner having accepted the correct position of law qua non-maintainability of the present petition before the High Court, the petitioner is estopped to circumvent the subsequent order dated 23.03.2022 passed by the AFT by cleverly not assailing it before the appropriate forum, however, wrongly agitating before a different forum.

⁴ Hereinafter referred as “Act”

9. Accordingly, in view of the recent judgment passed by this Court in *Nishant Kaushik(supra)*, the present petition is dismissed as not maintainable under law and on facts, as the petitioner is to take appropriate steps before the Hon'ble Supreme Court in accordance with law in compliance of *Section 31* and *Section 32* of the Act.

10. Petition is dismissed and the parties are left to bear their own costs.

(SURESH KUMAR KAIT)
(JUDGE)

(SAURABH BANERJEE)
(JUDGE)

NOVEMBER 3, 2022/rr

