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

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Judgment delivered on: 27.07.2023

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W.P. (C) 9903/2023 & CM. APPL. 38100/2023

CORPORAL KUMA VAT SAGAR NANA

.... PETITIONER

Versus

UNION OF INDIA & ORS

.... RESPONDENTS

Advocates who appeared in this case:

For the Petitioner: Mr. Ajeet Yadav, Mr. Pradeep Shukla, Mr. M.M. Gaur and Mr. R.K. Antil, Advocates.

For the Respondent: Mr. Ashok Kumar Kashyap, Senior Panel Counsel with Mr. Kabir Kumar Hazarika, Advocates.
Sqn. Ldr. Mr. M.N. Khan and Sgt. Mr. Vikash Kumar.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 21.07.2023, whereby the interim application filed by the petitioner before the Armed Forces Tribunal, Principal Bench, New Delhi, seeking grant of permission to take admission at Indian Institute of Management, Jammu for higher



education, was declined. Petitioner, who is an Airman in Indian Air Force, had applied for permission for appearing in the Common Aptitude Test (CAT-2022), however, the application for permission was not processed on the ground that the same was not permissible in terms of the policy of the Air Force. Despite that, petitioner took the test and claims to have qualified the same and has secured admission in the course.

2. Petitioner seeks leave from the respondent and in the alternative discharge from the Air Force for pursuing the course. It is contended by learned counsel for petitioner that the course is required for his career progression.

3. Petitioner had filed a writ petition before this Court, which was transferred to the Armed Forces Tribunal, whereby petitioner had sought to challenge the policy of the respondent whereby permission is being denied to the petitioner for pursuing the course.

4. Learned counsel for respondents relies on a decision of the Supreme Court dated 07.12.2017 in SLP (C) 16448/2017, titled *Union of India & Ors. Vs. CPL BK Verma*, wherein the Supreme Court has held as under:-

“The petitioners are aggrieved by order dated 20.02.2017 passed by the Delhi High Court in WP (C) No. 5952/2016.



The respondent, who is an Airman with the Air Force, applied for study leave to undergo M.Tech course at IIT, Dhanbad. The request was rejected by the concerned authorities and the respondent challenged this by filing a writ petition in the Delhi High Court.

It appears that during the pendency of the writ petition which ultimately allowed and during the pendency of the proceedings in this Court directed against the judgment and order passed by the Delhi High Court, the respondent was allowed to continue with his studies.

The petitioners are objecting to the continuation of the studies of the respondent as well as granting him study leave on the ground that the grant of study leave is only permissible to officers of the Air Force who have put in 15 years of service and their course of study would be beneficial to the Air Force. In so far as the respondent is concerned, he is neither an officer in the Air Force nor has he put in 15 years of service and the course he is attending would not, according to the Air Force, be of any benefit to the Air Force.

The High Court took the view that it would be discriminatory not to allow the respondent who is an Airman to take the course of M.Tech in IIT, Dhanbad.

Unfortunately, we are not in agreement with the view expressed by the High Court. There is no question of discrimination. There is a policy announced by the Air Force with regard to grant of study leave and if the respondent does not fall within contours of the policy, it cannot be helped. The Courts may not be satisfied with the policy but if any modifications are to be made, it is for the Air Force to take a call. The Court ought not to substitute its opinion for that of the Air Force.

Under the circumstances, the order passed by the High Court is set aside.



The special leave petition is disposed of.”

5. In view of the directions given by the Supreme Court in *BK Verma (supra)*, it is not permissible to grant any study leave to the petitioner. The Supreme Court has further held that even if this Court is dissatisfied with the policy, modification to the same, if any, can only be made by the Air Force and not by the Court.

6. In view of the above, this Court is not inclined to grant the prayer of the petitioner for grant of study leave.

7. In view of the above, we find no infirmity in the view taken by the Armed Forces Tribunal in the impugned order declining interim relief to the petitioner.

8. We find no merit in the petition. Petition is consequently dismissed.

9. At this stage, learned counsel for petitioner submits that the petitioner would be approaching the respondents for grant of Earned Leave.

10. In case any application is made by the petitioner for grant of any permissible leave, it would be open to the respondent/Air Force to consider the same in accordance with law. However, they shall do so with expedition.



11. Order *Dasti* under signature of the Court Master.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

JULY 27, 2023/NA

Signature Not Verified

Digitally Signed
By: RASHMI KAPOOR
Signing Date: 28.07.2023
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