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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 13.09.2023

+ W.P.(C) 12009/2023 & CM APPL. 47098/2023

LT COL SAURABH DUTT

..... Petitioner

Versus

UNION OF INDIA & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner:

In person.

For the Respondents:

Mr. Sushil Kumar Pandey, Senior Panel Counsel
and Ms. Neha Yadav, Advocate with Major Partho
Katuyayan.**CORAM:-****HON'BLE MR. JUSTICE SANJEEV SACHDEVA****HON'BLE MR. JUSTICE MANOJ JAIN****JUDGMENT****SANJEEV SACHDEVA, J. (ORAL)**

1. Petitioner seeks a direction to the Armed Forces Tribunal, Principal Bench, New Delhi to expedite the proceedings and adjudicate the matter within a specified time period.

2. Reference may be had to the judgement of the Supreme Court in *Union of India Vs. Parashotam Das*, 2023 SCC Online SC 314



wherein the Hon'ble Supreme Court has held that the powers of the High Court under Article 226 of the Constitution of India are not inhibited, however, the Supreme Court has placed a caveat that superintendence and control under Article 227 of the Constitution are somewhat distinct from the powers of judicial review under Article 226 of the Constitution. The Supreme Court has observed as under:

“9. Learned counsels contended that Articles 226 and 227 of the Constitution are not in pari materia and, thus, the limitation imposed under Article 227(4) could not be extended to Article 226 of the Constitution. Article 227(4) begins with the phrase “Nothing in this Article” implying that the embargo in the provision is only limited to that Article.

10. It would be worthwhile to reproduce Article 227(4), which reads as under:

227. Power of superintendence over all courts by the High Court - (4) Nothing in this article shall be deemed to confer on a High Court power of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.”

11. Thus, even for the sake of argument, were it to be said that Article 227(4) takes away the power of superintendence of the High Court for matters emanating from courts-martial under Section 15 of the said Act, the same will not dilute the power of the High Courts under Article 226 even for matters dealing with courts-martial.



In any case, the High Courts have been reluctant to entertain writ petitions against orders under Section 15 of the said Act, and have refused to become a court of second appeal.”

15. Lastly, it was submitted that the issues are no more res integra in view of the recent Constitution Bench Judgment of five-Judges' Bench of this Court in Rojer Mathew v. South Indian Bank Ltd. where in paragraph 215, following L. Chandra Kumar, this Court settled that the writ jurisdiction under Article 226 does not limit the power of the High Court, expressly or by implication, against military or armed forces dispute and that the restriction under Article 227(4) is only qua administrative supervision by the High Courts and not qua judicial review. Para 215 reads as under:

“215. It is hence clear post L. Chandra Kumar that writ jurisdiction under Article 226 does not limit the powers of High Courts expressly or by implication against military or armed forces disputes. The limited ouster made by Article 227(4) only operates qua administrative supervision by the High Court and not judicial review. Article 136(2) prohibits direct appeals before the Supreme Court from an order of armed forces tribunals, but would not prohibit an appeal to the Supreme Court against the judicial review exercised by the High Court under Article 226.”

3. In view of the said observation of the Supreme Court, it is clear



that this Court has the power of judicial review under Article 226 but would not have the power of superintendence and control as exercisable under Article 227 over the Armed Forces Tribunal.

4. The relief that the petitioner is seeking, primarily, falls within the purview of Article 227 and as such the petition before this Court would not be maintainable.

5. The petition is accordingly dismissed.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

SEPTEMBER 13, 2023/NA