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

% Judgment delivered on: 19.09.2023

W.P.(C) 12311/2023 & CM APPL. 48500/2023

MAJ GEN SHRI KANT SHARMA SM VSM RETD

..... Petitioner

versus

UNION OF INDIA & ORS.

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. I. S. Singh, Mr. Abhishek Singh, Mr. Aditya Bari & Mr. Nasir Mohd. Advocates

For the Respondent: Mr. Harish Vaidyanathan Shankar, CGSC, Mr. Srish Kumar Mishra, Mr. Sagar Mehlawat, Mr. Alexander Mathai Paikaday, Mr. M. Sriram, Mr. Krishnan V., Advocates & Mr. Amit Acharya, Advocate/GP with Col. Sarika, Major Partho Katyayan & Major Deepak.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner, *inter alia*, impugns order dated 25.07.2023 whereby the representation filed by petitioner for holding of a Special Promotion Board for considering the petitioner for promotion has been dismissed.



2. Said representation has been dismissed on the ground that the Petitioner had earlier sought identical relief which was declined upto the Supreme Court and as such Petitioner was precluded from claiming the same relief again.

3. Petitioner had earlier filed an Original Application before the Armed Forces Tribunal (hereinafter referred to as the Tribunal) which was dismissed by order dated 22.09.2011. Order of the Tribunal was challenged by the Petitioner by filing a Writ Petition under Article 226 of the Constitution of India before this Court being WP (C) No. 7208/2011. Said Writ Petition was allowed by order dated 11.01.2013.

4. Respondent thereafter filed a Special Leave Petition before the Supreme Court assailing the order of the High Court on merits and *inter alia* contending that the remedy of the petitioner against an order passed by the Tribunal was only to file an appeal under Section 30 of the Armed Forces Tribunal Act, 2007(hereinafter referred to as the Act) to the Supreme Court.

5. The Supreme Court granted leave to appeal and by judgment dated 11.03.2015 in Civil Appeal No. 7400/2013, set aside the judgment of the High Court and held that a Writ Petition under Article 226 of the Constitution of India was not maintainable to the High Court and the only remedy was by way of an appeal to the Supreme Court.

6. Supreme Court also granted liberty to petitioner and all other similarly situated petitioners to avail the remedy under Section 30 of



the Act with leave to appeal under Section 31 of the Act and if necessary, seek condonation of delay in filing the appeal. Petitioner instead of availing the benefit of the liberty granted by the Supreme Court to file an appeal, Petitioner filed a review petition which was dismissed on 13.01.2016.

7. As per the respondents, there was a complete quietus after the judgment of the Supreme Court till 2023, when the petitioner filed a Writ Petition before this Court being WP (C) 8003 of 2023 seeking benefit of the decision dated 21.02.2023 of the Supreme Court in *Union of India & Ors. Vs. Parashotam Dass 2023 SCC OnLine 314* whereby the Supreme Court has held that there is no *per se* restriction on exercise of powers under Article 226 of the Constitution of India by the High Court.

8. This Court by order dated 01.06.2023 in WP (C) 8003/2023 directed respondents to treat the petition as a representation. Said representation has been dismissed by the order dated 25.07.2023 (impugned herein) holding that as petitioner had already exhausted his remedy upto the Supreme Court, the case of petitioner could not be reopened after it has become final.

9. Reference may be had to the decision of the Supreme Court in *Neelima Srivastava versus State of U.P. 2021 SCC OnLine SC 610* wherein the Supreme Court has held as under:

“30. It becomes absolutely clear from the above clarification that earlier decisions running counter to the principles settled in the decision of Umadevi (3) will not be treated as precedents. It cannot mean that the judgment of a competent Court delivered prior to the



decision in Umadevi (3) and which has attained finality and is binding inter se between the parties need not be implemented. Mere over-ruling of the principles, on which the earlier judgment was passed, by a subsequent judgment of higher forum will not have the effect of uprooting the final adjudication between the parties and set it at naught. There is a distinction between over-ruling a principle and reversal of the judgment. The judgment in question itself has to be assailed and got rid of in a manner known to or recognized by law. Mere over-ruling of the principles by a subsequent judgment will not dilute the binding effect of the decision on inter-parties.

(underlining supplied)

10. The Supreme Court in *Neelima Srivastava (supra)* has held that merely because the principles on which the earlier *inter partes* judgment was based are over ruled would not have the effect of setting to naught the final adjudication between the parties. It would not amount to reversal of the *inter partes* judgment. There is a distinction between over-ruling of a principle and reversal of the judgment. The *inter partes* judgment has to be assailed and got set aside in accordance with law. Mere over-ruling of the principles by a subsequent judgment would not dilute the binding effect of the *inter partes* decision.

11. The proceedings earlier initiated by the Petitioner culminated in an order of dismissal by the Supreme Court by its judgment dated 11.03.2015. Said lis became final. Petitioner even did not avail of the liberty granted by the Supreme Court to file an appeal but filed a Review Petition, which was also dismissed.

12. The *inter partes* decision having become final, Petitioner could



not have reagitated the same by filing a representation and on rejection of which approach this court afresh by way of a Writ Petition under Article 226 of the Constitution of India.

13. At this stage learned counsel for petitioner seeks leave to withdraw the petition reserving the right of the petitioner to avail of such remedy as may be available in law before an appropriate forum.

14. Petition is accordingly dismissed as withdrawn. All rights and contentions of the parties are reserved.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

SEPTEMBER 19, 2023/dr

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