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

% Date of decision: 13th December, 2023

+ W.P.(C) 16015/2023, CM APPL. 64449/2023 & CM APPL. 64450/2023

MEMVIR SINGH

..... Petitioner

versus

UNION OF INDIA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Udhav Shanker Maurya,
Advocates.

For the Respondents: Mr. Naginder Benipal, SPC for UOI
with Ms. Rupali Kapoor, GP,
Ms. Bharti Nayar Benipal,
Mr. Naveen Chaudhary, Ms. Harithi
Kambiri, Mr. Ankit Siwach and
Mr. Deepak Kumar, Advocates.

Major Partho Katyayan, Army.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 10.12.2022 passed by the respondents whereby the request of the petitioner to change his option



from “unwilling for extension” to “willing for extension” has been rejected and he is directed to be discharged from service on 31.12.2023.

2. Learned counsel for the petitioner submits that petitioner has approached the Armed Forces Tribunal, however, his case is not being taken up for consideration and repeatedly adjournments have been granted to the respondents to file counter affidavit and now the case stands adjourned to 19.02.2024, by which date petitioner would have already superannuated.

3. Reference may be had to the judgment of the Supreme Court in *Union of India & Ors. vs. Parashotam Dass*: 2023 SCC online 314, wherein the Supreme Court has held that the decision of the Tribunal would be subject to jurisdiction of the High Court under Article 226 of the Constitution of India, however, put in a caveat that though the powers of the High Court under Article 226 of the Constitution of India are not inhibited, the superintendence and control under Article 227 of the Constitution of India is distinct from the powers of judicial review under Article 226 of the Constitution of India, thereby indicating that his Court does not exercise power of superintendence over the Armed Forces Tribunal.

4. What the petitioner is seeking is really exercise of powers of superintendence under Article 227 of the Constitution of India over the conduct of the cases by the Armed Forces Tribunal which is not permissible in law.



5. We may further note that the cases relied on by the petitioner in support of this case before us are cases where the Courts have directed reinstatement of the individual after the individual had succeeded on the merits of the case.

6. The Original Application filed by the petitioner is still pending consideration before the Armed Forces Tribunal. In case, petitioner is successful in those proceedings, it would be open to the Armed Forces Tribunal to pass consequential orders in favour of the petitioner.

7. Learned counsel for the petitioner submits that the petitioner is seeking an interim relief by way of continuation in service till his Original Application is disposed of.

8. It is settled position of law that final relief cannot be granted by way of an interim order. Unless it is held by the Tribunal that the petitioner is entitled to continuation of service, there cannot be any continuation of service by way of an interim order passed by this Court. In case petitioner is successful, petitioner can be granted consequential relief of reinstatement retrospectively. However, in case petitioner is not successful, the period during which petitioner would continue in service pursuant to an interim order passed would be an illegal and unlawful usurpation of office without any right to the same.¹

9. Accordingly, while balancing equities, the continuation of

¹ Order dated 08.09.2021 of the Delhi High Court in W.P.(C) 9743/2021 Lt. Col. Kirti Shintre vs. UOI



service cannot be permitted by way of an interim order and has to be by way of a final order. On that ground also, we find no ground to interfere in the matter or pass any interim order in favour of the petitioner permitting him to continue in service.

10. In view thereof, we find no merit in the petition, the same is, consequently, dismissed.

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

SANJEEV SACHDEVA, J

MANOJ JAIN, J

DECEMBER 13, 2023
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