

08.11.2024

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**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE JURISDICTION**

WPA 1523 of 2024

Anil Kumar Sharma

-Vs-

Union of India & Ors.

Ms. Manisha Dutta

... for the petitioner

Mr. Sudipta Kumar Mazumder, Ld. DSG,

Mr. Tridip Saha,

Mr. Sourav Kar

... for the Union of India

On the issue of jurisdiction raised by the respondents, this matter was adjourned yesterday.

Today, it is submitted by the learned Deputy Solicitor General that the exception to Section 3 (o) of the Armed Forces Tribunal Act, 2007 is not applicable in this case as submitted by the petitioner. The order for retirement, release or discharge is made under Section 22 and not under Section 18 of the Armed Act, 1950. As a consequence thereof, the Armed Forces Tribunal constituted under the Armed Forces Tribunal Act, 2007 has the jurisdiction to receive, try and determine the writ petition and this Court lack in the same.

On behalf of the petitioner, it is submitted that only the petitioner wants his representation to be considered.

The question of assuming jurisdiction under Article 226 of the Constitution of India for even directing the authorities to consider the petitioner's representation is eliminated in view of the ratio laid down in the judgment reported in **(2020) 17 SCC 602 (AIIMS vs. Sanjiv Chaturvedi & Ors)**. I also find substance in the arguments of the Deputy Solicitor General.

The writ petition is, therefore, dismissed as withdrawn.

The time spent between 2nd August, 2024 and this date (08.11.2024) should be construed as the petitioner prosecuting a litigation bona fide before a Court without jurisdiction. The petitioner is granted leave to approach the jurisdictional Armed Forces Tribunal within a period of three months from date. If the petitioner does so, then the Tribunal should decide the issue as expeditiously as possible without going into any delay aspect, but not later than three months from the date of filing of the said petition.

(Arindam Mukherjee, J.)