



2024:DHC:8776-DB



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

Date of decision: 12.11.2024

+ W.P.(C) 15722/2024

NO. 918457 SGT ANOOP KUMAR PSPetitioner

Through: Mr. Manoj Kumar, Adv.

versus

UOI AND ORS

.....Respondents

Through: Mr. Nishant Gautam, CGSC
with Ms. Sanjana Mehrotra, Mr.
Mayank Sharma, Mr. Ajay
Kanojiya, Mr. Sanjay Pal & Mr.
Vinay Kaushik, Adv.
Wg Cdr T N Swamy, Sgt
Mindu Prasad & Sgt Ashok
Kumar.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (ORAL)

CM APPL. 65980/2024 (Exemption)

1. Allowed, subject to all just exceptions.

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2. This petition has been filed by the petitioner challenging the Order dated 18.10.2024 passed by the learned Armed Forces Tribunal, Principal Bench, New Delhi (in short, "AFT") in RA 55/2024 with MA 4624/2024 in OA 385/2024 titled ***Sgt Anoop Kumar PS vs Union of India & Ors.***



3. The above review application had been filed by the petitioner seeking review of the Order dated 09.08.2024 passed by the learned AFT on the aforesaid Original Application of the petitioner. The learned AFT, in its Order dated 09.08.2024, after considering the claim of the petitioner for premature discharge from service from the Indian Air Force, had directed the Competent Authority of the respondents to consider the said plea of the petitioner, in the following terms:

“14. We may point out that it is also not essential that acceptance of PMR, as in the case in hand, may necessarily put an end to the applicant’s family woes. However, recognition of such an opportunity to take a compassionate view by acceptance of the PMR and provision of an opportunity to do so, is an effort to implement and afford protection to the right to family of every person, the mandate of the provisions of the Constitution, the International Covenants and the spirit of the statutes set out above.

15. Therefore, taking note of the fact that the applicant’s engagement period is left for less than 2 years, coupled with the fact that entire responsibility of the family is on the shoulder of the applicant, and the same being recognised as reasonable grounds under Para 2 (b) and (c) of AFO 16/2008, a compassionate view is required to be taken on the issue, purely on humanitarian grounds.

16. Therefore, in light of the above factors, we set aside the impugned order and we direct the respondents to re-consider the application of the petitioner seeking premature discharge from service. The respondents are directed to give effect to such reconsideration within a period of one month from the receipt of this order.”

4. Claiming that the learned AFT had failed to appreciate that the



respondents themselves had granted premature discharge to four other airmen who were similarly situated as the petitioner, the petitioner filed the abovementioned Review Application before the learned AFT.

5. The learned AFT, by the Impugned Order dated 18.10.2024, has dismissed the said Review Application taking cognizance of the fact that in the meantime, pursuant to the Order dated 09.08.2024, the Competent Authority of the respondents has issued a Speaking Order dated 10.09.2024, rejecting the prayer of the petitioner. The learned AFT further observed that merely because premature retirement was granted in the cases of certain employees, the same would not constitute as sufficient ground for reviewing or recalling its earlier Order dated 09.08.2024.

6. The learned counsel for the petitioner submits that the learned AFT has erred in dismissing the Review Application filed by the petitioner. He submits that the respondents had failed to answer the claim of the petitioner that four other similarly placed airmen have been granted premature discharge from service while the petitioner is being denied the same. He submits that the Speaking Order dated 10.09.2024 passed by the respondents pursuant to the Order dated 09.08.2024 of the learned AFT, is also incorrect, and is only a paper compliance of the said Order of the AFT, which was released to the petitioner belatedly after the petitioner had filed the Review Application.

7. On the other hand, the learned counsel for the respondents, who appears on advance notice, opposes the present petition by contending that the petitioner cannot challenge the Speaking Order dated



10.09.2024 passed by the Competent Authority of the respondents before this Court, without first placing a challenge thereto before the learned AFT.

8. We have considered the submissions made by the learned counsels for the parties.

9. As noted hereinabove, the learned AFT by its Order dated 09.08.2024 had directed the respondents to re-consider the case of the petitioner for premature discharge from service. Pursuant to the said order, the respondents considered the case of the petitioner and rejected the same by a Speaking Order dated 10.09.2024. However, the learned counsel for the petitioner submits that there was a delay in disclosing the said Order to the petitioner. In our view, the same would not have any effect on the merits of the present petition. Once a Speaking Order has been passed by the Competent Authority of the respondents, the only remedy with the petitioner, if he is aggrieved of the said order, was to challenge the same before the learned AFT. Such challenge has not been made by the petitioner till date. The petitioner had filed a Review Application by contending that the learned AFT, in passing the Order dated 09.08.2024, has failed to appreciate that four other airman had been granted similar relief by the respondents. The learned AFT has rightly concluded that this in itself may not be a sufficient ground to grant the relief of premature discharge from service to the petitioner or to review its earlier order.

10. Interestingly, the Order dated 09.08.2024 passed by the learned AFT in the aforesaid Original Application is not even challenged before this Court. It has been held by the Supreme Court in **DSR Steel**



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(P) Ltd. v. State of Rajasthan, (2012) 6 SCC 782, followed in **Municipal Corporation of Delhi vs. Yashwant Singh Negi**, 2013 SCC Online SC 308, that the challenge to an order passed in a review application without challenging the original order is not maintainable.

11. Accordingly, we do not find any merit in the present petition, and the same, along with pending application, is dismissed.

12. However, dismissal of the present petition shall in no manner prejudice the rights and contentions of the petitioner, in case the petitioner wishes to challenge the Speaking Order dated 10.09.2024 passed by the Competent Authority of the respondents before the appropriate forum. We make it clear that we have not expressed any opinion on the merits of the said Order.

NAVIN CHAWLA, J

SHALINDER KAUR, J

NOVEMBER 12, 2024/ab/B/SJ