

(2023) 02 DEL CK 0004

In the Delhi High Court

Case No : Civil Writ Petition No. 8171, 9627 Of 2020, 1145, 1720, 2513, 3402, 5273, 6483, 9846, 13013 Of 2021, Civil Miscellaneous Application No. 4963-4964, 10345, 16227, 18656, 30324 Of 2021, 2828, 9793, 52371 Of 2022

Amar Singh Ex Nb Sub & Ors.

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 01-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 226, 227, 227(4)
Armed Forces Act, 2007 — Section 30, 31, 34

Citation : (2023) 02 DEL CK 0004

Hon'ble Judges : Manmohan, J;Suresh Kumar Kait, J;Neena Bansal Krishna, J

Bench : Full Bench

Advocate : Suraj Mal Dalal, Harish Vaidyanathan Shankar, Srish Kumar Mishra, Sagar Mehlawat, Alexander Mathai Paikaday

Judgement

Neena Bansal Krishna, J

1. A reference has been made in the aforementioned case of Amar Singh Ex NB Sub & ors to determine whether the right of Appeal against the Final Orders of the Armed Forces Tribunal under Sections 30 and 31 of the Armed Forces Act, 2007 (Hereinafter referred to as Act, 2007), excludes the remedy of Judicial Review by the High Court in exercise of its Writ Jurisdiction. It reads as under:

"3. Learned counsel for the respondents in W.P.(C) 8171/2020 has drawn the attention of this Court to the decision dated 11.10.2022 in W.P. (C) 14385/2022 titled as Major Nishant Kaushik vs. Union of India and Ors. whereby this Court has observed as under:

"6. As apparent there from, the scope of an appeal from a final decision or order of the Tribunal before the High Court is extremely limited and is restricted to the power of judicial review, which is to be exercised only when it is examining the decision-making process or when it is to interfere only for correcting the errors of

jurisdiction or when it is for correcting errors apparent on the face of record or when the Tribunal acts illegally. Therefore, ordinarily no appeal from a final decision or order of the Tribunal can lie before the High Court.

7. Further in terms of Section 34 of the Act, all pending matters, i.e., every petition, or other proceedings before any High Court or other forum(s) immediately before the date of establishment of the Tribunal under this Act, the cause of action whereon it is based, is such that it would have been within the jurisdiction of such Tribunal stood transferred before the Tribunal since its constitution.

9. Therefore, in view of the aforesaid, the present petition is not maintainable in the present form before this Court as the only remedy of challenging the final decision of the Tribunal lies before the Apex Court.”

4. Learned counsel for the petitioners in W.P.(C) 8171/2020 has drawn the attention of this Court in Order passed by Co-ordinate Bench on 15.03.2022 in W.P (C) 6483/2021 titled as Wing Commander Shyam Naithani vs. Union of India and Ors. and other batch petitions whereby observed as under:

44. The jurisdiction of High Court under Articles 226 and 227 of the Constitution cannot be bypassed merely by making a provision for direct appeal to the Supreme Court against an order of a Tribunal for the reason that the Apex Court exercises jurisdiction under Sections 30 and 31 of the Armed Forces Tribunal Act, 2007 only if a point of law of general public importance is involved. In Ex. Lac Yogesh Pathania (supra), the Supreme Court has clarified that appeals under the Armed Forces Tribunal Act are considered only if a point of general public importance is involved.”

45. The Armed Forces Tribunal Act, 2007 excludes the administrative supervision of the High Court under Article 227(4) of the Constitution but not judicial superintendence and certainly not jurisdiction under Article 226 of the Constitution.

46. In Rojer Mathew (supra) judgment, a Constitution Bench of the Supreme Court has held that Article 226 of the Constitution does not restrict writ jurisdiction of High Courts over the Armed Forces Tribunal observing the same can neither be tampered with nor diluted. Instead, the Supreme Court has held that High Court's jurisdiction has to be zealously protected and cannot be circumscribed by the provisions of any enactment.

47. The Supreme Court in Balkrishna Ram (supra) following the earlier judgment passed by a seven-judges Bench in the case of L.Chandra Kumar (supra) has observed that the writ jurisdiction of High Courts over Tribunals cannot even be taken away by a legislative or constitutional amendments and the 2015 judgment of Union of India and Ors. versus. Maj. Gen. Shri Kant Sharma and Anr. (supra) by a Bench of two Judges cannot overrule the law already laid down. It has also held that the remedy of a direct appeal from the order passed by Armed

Forces Tribunal to the Supreme Court would be extremely difficult and beyond the monetary reach of an ordinary litigant. Consequently, the Supreme Court in *Balkrishna Ram (supra)* reinstated the right to challenge verdicts of the Armed Forces Tribunal in the High Courts.

48. However, the Writ Court while examining the judgment/order passed by the Tribunal, will exercise the power of judicial review which means that the Court shall examine the decision-making process and interfere only for correcting errors of jurisdiction or errors apparent on the face of record or if the Tribunal acts illegally. (See: *Hari Vishnu Kamath (supra)*; *Surya Dev Rai (supra)* and *Rajendra Diwan versus Pradeep Kumar Ranibaia and Am. (2019) 20 SCC 143*)

49. This Court would like to emphasise, with all the power that it commands, that judicial restraint should be exercised when the reasons that a tribunal gives for its decision are being examined. Further, the writ Jurisdiction of High Court cannot be exercised the cloak of an appeal in disguise". (See: *Rajendra Diwan versus Pradeep Kumar Ranibaia and Anr., (2019) 20 SCC143*).

50. Keeping in view the aforesaid conclusions, the preliminary objection raised by Union of India with regard to the maintainability of the present writ petitions is rejected. List the present batch of matters before the roster bench for consideration in accordance with the parameters laid down hereinabove on 21st March, 2022.

5. Accordingly, there is a difference of opinion between the two different Benches of this Court, therefore, to settle the issue primarily, let the above said petitions be further listed before the larger Bench."

2. In both the above referred cases, the petitioner had filed a Writ petition in this Court to challenge the orders of the Armed Forces Tribunal.

3. That the writ jurisdiction of the High Courts for Judicial Review is not completely ousted by the statutory Appeal mechanism provided under Sections 30 and 31 of the Act, 2007 is no longer res integra, in view of the decision of the Supreme Court in *Balkrishna Ram vs Union of India and anr. (2020) 2 SCC 442*.

4. In *Shyam Naithani (supra)* this Court held that the jurisdiction of High Court under Articles 226 and 227 of the Constitution cannot be bypassed merely by making a provision for direct Appeal to the Supreme Court against an order of a Tribunal for the reason that the Apex Court exercises jurisdiction under Sections 30 and 31 of the Act, 2007 only if a point of law of general public importance is involved.

5. While examining the identical question of law in *Major Nishant Kaushik (supra)*, this court considered the tenets of Sections 30 and 31 of the Act, 2007 to hold that the statutory Appeal against an Order of the Armed Forces Tribunal lies only with the Hon'ble Supreme Court. The Court while dismissing the petition, had concurred with the observations in *Shyam Naithani (supra)*, recognising the remedy of Judicial Review against the orders of the Armed Forces

Tribunal under the writ jurisdiction of a High Court.

6. Thus, the conclusion is monosemus and there is no difference of opinion in Shyam Naithani (supra) and in Major Nishant Kaushik (supra) as both the decisions reiterate and acknowledge the jurisdiction of the High Court for Judicial Review against the Orders of the Armed Forces Tribunal.

7. The reference is answered accordingly.

8. List the matters before the Roster Bench on 09.02.2023.