

(2022) 01 DEL CK 0155

In the Delhi High Court

Case No : Civil Writ Petition No. 1064 Of 2022, Civil Miscellaneous Application
No. 3041-3042 Of 2022

Brig SK Gupta Retd Mr04965-P

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 18-01-2022

Acts Referred:

Constitution Of India, 1950 — Article 21

Army Act, 1950 — Section 122(1)(b), 122(1)(c), 123, 123(2)

Citation : (2022) 01 DEL CK 0155

Hon'ble Judges : Manmohan, J;Navin Chawla, J

Bench : Division Bench

Advocate : Neela Gokhale, Anurag Ahluwalia

Final Decision : Dismissed

Judgement

Manmohan, J

1. The petition has been heard by way of video conferencing.
2. Present writ petition has been filed challenging the attachment order dated 16th August, 2021 which allegedly has never been served upon the Petitioner and the conveying letter dated 30th December, 2021. Petitioner also challenges the apprehension roll dated 06th January, 2022 and seeks a direction to the Respondents to pay Rs.10,00,000/- as damages to the Petitioner for violation of his fundamental right guaranteed under Article 21 of the Constitution.
3. Learned counsel for the Petitioner states that vide impugned apprehension roll dated 06th January 2022, the Respondents have ordered coercive apprehension of the Petitioner, with the aid of civil police officers. She emphasises that on 09th January 2022, over ten Military Police personnel

forced their way into the Petitioner's house, when Delhi was under a weekend COVID-19 curfew and intimidated the Petitioner's wife in full

view of the housing society, in the Petitioner's absence.

4. She states that the Petitioner is a sixty-year old retired army officer with an unblemished record of service since the date of his commissioning i.e.

02nd January, 1984. She states that the Petitioner applied for premature retirement which was accepted, and the Petitioner, who retired w.e.f. 15th

October, 2018, was duly cleared with the declaration that there were no disciplinary proceedings pending against him while in service.

5. She states that the instant disciplinary proceedings are for the year 2015 and the Respondents have invoked Section 123 of the Army Act against

the Petitioner vide letter dated 05th July, 2019, which shows that the proceedings were time-barred right from the inception.

6. She points out that being aggrieved and dissatisfied by the same, the petitioner approached the Armed Forces Tribunal (AFT) by filing O.A.

No. 1135/2019 on 23rd July 2019, which is pending final adjudication.

7. She emphasises that during the pendency of the said O.A., the Respondents issued a communication dated 30th December, 2021 to the Petitioner

conveying a purported attachment order and issued an apprehension roll dated 06th January, 2022 to arm twist and coercively confine and incarcerate

the Petitioner.

8. Learned counsel for the respondents, who appears on an advance notice, states that an application claiming similar relief has been heard by the

AFT and the order is to be pronounced today.

9. A perusal of the paper book reveals that the respondents have initiated the impugned disciplinary proceedings after three years of the

Petitioner's superannuation relying on Sections 122 1(b), 122 1(c) and 123 (2) of the Army Act, 1950 (the Act). Consequently, this Court

is prima facie of the view that the proceedings initiated by the respondents are within limitation.

10. Further, the Petitioner had preferred an application bearing M.A. No. 05/2022 on 03rd January 2022, seeking a stay on the effect and

consequence of the impugned attachment order dated 30th December, 2021.

11. Consequently, this Court is of the view that the petitioner cannot pursue two parallel proceedings at the same time. As the petitioner has already

invoked the jurisdiction of the AFT, this Court is of the opinion that the present writ petition amounts to forum shopping.

12. Though, in the midst of this order, this Court has been informed that the AFT has dismissed the petitioner's application being M.A. No.

05/2022, yet this Court is of the view that the dismissal of the application would not make the present writ petition maintainable.

13. Accordingly, keeping in view the aforesaid, the present writ petition along with pending application stand dismissed. However, in the event the

petitioner is aggrieved by the decision of the AFT, liberty is granted to the petitioner to assail the same by filing appropriate proceedings in accordance

with law.