
(2020) 09 DEL CK 0195

In the Delhi High Court

Case No : Civil Writ Petition No. 7194 Of 2020

Col Mukul Dev

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 29-09-2020

Acts Referred:

Citation : (2020) 09 DEL CK 0195

Hon'ble Judges : Rajiv Sahai Endlaw, J;Asha Menon, J

Bench : Division Bench

Advocate : Harish Vaidyanathan Shankar

Final Decision : Disposed Of

Judgement

Rajiv Sahai Endlaw, J

C.M. Appln. No.24316/2020 (Exemption from filing certified copy)

1. Allowed, subject to just exceptions and as per extant rules.

2. The application is disposed of.

W.P. (C) 7194/2020, C.M. Appln. No.24317/2020 (of petitioner for grant of stay order)

3. The petitioner, a colonel in the JAG Branch of the Indian Army, has filed this petition impugning the order dated 21st September 2020, of the Armed Forces Tribunal (AFT), Principal Bench, in O.A. No.2410/2020, declining interim relief sought by the petitioner of stay of superannuation of the petitioner from the post of Colonel, due on 30th September 2020.

4. We have heard the petitioner appearing in person and the counsel for the respondents appearing on advance notice.

5. It is the case of the petitioner, (i) that owing to the interim orders in OA filed by one Col. Leena Gaurav, the declaration of the result of No.2 Selection Board

(JAG), held in December 2019, whereupon depends the promotion of the petitioner to the rank of Brigadier, was stayed; (ii) that the petitioner was not made a party in the OAs filed by Col. Leena Gaurav; (iii) the OA filed by Col. Leena Gaurav has been ordered to be taken up alongwith OA filed by Col. V.S. Gaur; (iv) the interim order affecting the petitioner in OA filed by Col. Leena Gaurav, was passed in the absence of the petitioner; (v) that though the petitioner applied for impleadment in the OA filed by Col. Leena Gaurav but his application for impleadment was rejected, reasoning that he could support the petitioner Col. Leena Gaurav and not contradict her; (vi) that this compelled the petitioner to file his own O.A. No. 787/2020 alongwith application for interim relief seeking stay of his superannuation due on 30th September 2020, till the declaration of the result, but which order was declined, observing that the petitioner, if succeeds in his OA, the superannuation/retirement of the petitioner will not come in the way of grant of the relief; (vii) that the petitioner, if promoted, would superannuate after one year; and, (viii) that though AFT vide order dated 28th August 2020 in O.A. No. 996/2020 titled Brig. K.K. Nandwani vs. Union of India & Ors., stayed the superannuation of the Applicant therein, but declined such an order to the petitioner.

6. The petitioner, neither in this petition nor in the OA filed before the AFT, has impleaded Col. Leena Gaurav, vide interim order in OA filed by whom, the petitioner is affected. This, in our opinion has potential to result in conflicting orders. The AFT, in our opinion cannot grant relief claimed in the OA filed by the petitioner, without considering the contentions of Col. Leena Gaurav and Col. V.S. Gaur in OAs filed by them.

7. In our view it is thus necessary that the AFT has a look at the three OAs together.

8. The counsel for the respondents appearing on advance notice has also placed before us the concern of the respondents, of the posts lying vacant in JAG owing to the interim order and affecting the functioning of JAG and states that the respondents are also desirous of early resolution of the matter.

9. In the circumstances, without going into the merits of the claim of the petitioner, we deem it appropriate to request the AFT (We are informed by the counsel for the respondents that the Bench of Hon'ble the Chairperson and Hon'ble the Member of AFT which has heard all the three petitions, is scheduled to hold sitting tomorrow), to take up all the three petitions together, tomorrow itself i.e. 30th September 2020, in view of the impending superannuation of the petitioner tomorrow.

10. Till such consideration of the matter by the AFT and passing of order in pursuance thereto, the order of superannuation of the petitioner be not given effect to.

11. The counsel for the respondents to inform all the counsels in the OAs preferred by Col. Leena Gaurav and Col. V.S. Gaur of the listing of the matter

tomorrow i.e. on 30th September 2020.

12. The AFT, while considering the matter, to also consider the interim order, if any, required to be passed in favour of the petitioner.

13. We also direct the respondents to produce the records of the No.2 Selection Board (JAG), held in December 2019, before the AFT, during the hearing tomorrow or any subsequent date directed.

14. A copy of this order be forwarded to the petitioner and the respondents immediately for onward transmission to the AFT today itself, for compliance.

15. The petition is disposed of.