

(2019) 08 DEL CK 0023

In the Delhi High Court

Case No : Review Petition No. 32 Of 2019, Civil Miscellaneous Application No. 4057 Of 2019 In Civil Writ Petition No. 10830 Of 2018

Hav. Sham Dass

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 01-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 21
Army Rules, 1954 — Rule 147A

Citation : (2019) 08 DEL CK 0023

Hon'ble Judges : G.S. Sistani, J; Jyoti Singh, J

Bench : Division Bench

Advocate : Shree Prakash Sinha, Marina Wheelu, Anand Kumar, Maninder Acharya, Anil Soni

Final Decision : Disposed Off

Judgement

G.S. Sistani, J

C.M. Appl. No. 4057/2019 (for delay)

1. This is an application seeking condonation of delay of 38 days in filing the review petition.
2. For the reasons stated in the application, the same is allowed and the delay is condoned.

C.M. stands disposed of.

REVIEW PETITION 32/2019 in W.P.(C) 10830/2018

3. Writ petition, being W.P.(C) 10830/2018, was filed in this Court wherein the following prayers were made:-

"I. Declare Rule 147A of the Army Rules, 1954 inconsistent with the provisions of Army Act, 1950 and allied rules as well as violative of Article 14 and 21 of the

Constitution of India, and/or

II. Pass such other or further order/orders, as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case."

4. During the hearing of the matter, a preliminary objection was raised by counsel for the respondent with regard to maintainability of this writ petition before the High Court. It was submitted that the jurisdiction to decide the vires of Rule 147A of the Army Rules, 1954 was with the Armed Forces Tribunal and thus the writ petition was not maintainable. Reliance was placed on the decision rendered in the case of L. Chandra Kumar Vs. Union of India and Ors., (1997) 3 SCC 261, more particularly para 99. On the basis of the stand taken by the respondent and the statement made by Mr. Shree Prakash Sinha, learned counsel for the petitioner, we had transferred the matter to the Armed Forces Tribunal.

5. After the matter was transferred to the Armed Forces Tribunal, an application for review was filed by the respondent seeking to withdraw the earlier stand taken by them regarding the jurisdiction of the Tribunal. A prayer was made in the review petition to set aside the order dated 1.11.2018 passed by this Court and restore the writ petition.

6. We are informed today that after the writ petition had been transferred to the Armed Forces Tribunal, the Tribunal has heard the matter and passed a judgment on 24.05.2019. Copy of the judgment has been handed over across the Board during the hearing. Having perused the judgment passed by the Tribunal, we find that the Tribunal has taken upon itself to decide the issue of maintainability of the OA before the Tribunal as one of the issues involved was testing the vires of Army Rule 147A. The Tribunal has adjudicated upon the issue as to whether the Armed Forces Tribunal has the jurisdiction and power to test the vires of the provisions of the Army Act and has held that the Armed Forces Tribunal cannot decide the vires of a provision of law or the subordinate legislation. Despite observing that the Tribunal had no power and jurisdiction to decide the vires, surprisingly, it has tested and examined the vires of Army Rule 147A and has held that the said Rule is not ultra vires the Constitution or the Army Act.

7. We are pained to notice that once we had transferred the matter to the Armed Forces Tribunal based on the stand of the respondent, that the Tribunal had the jurisdiction to test the vires of Army Rule 147A, the Tribunal took upon itself the task of adjudicating this issue. In our view, this was not a proper course of action. Nevertheless having decided that the Tribunal had no jurisdiction to test the vires, we are unable to understand why the Tribunal delved into then testing the vires of the Rule. Unfortunately, the situation that now emerges is that while on one hand, the Tribunal has ruled that it has no jurisdiction but on the other hand, has given a finding on the vires of the Rule against the applicant.

8. In view of the above position, we do not find any necessity of passing any further order in the review petition. We, however, record the submission of the learned ASG that the respondents still support the stand taken by the

respondents in the review petition as regards the jurisdiction of the Armed Forces Tribunal to test the vires of the Army Act and Rules thereunder.

9. Faced with the judgment passed by the Tribunal, the learned counsel for the petitioner submits that he will take appropriate steps to assail the judgment of the Tribunal in accordance with law and the remedies available to him.

10. With these observations, the review petition is disposed of.