

(2020) 03 DEL CK 0296

In the Delhi High Court

Case No : Civil Writ Petition No. 2809 Of 2020

Lt. Col. Nikhil Kumar Singh

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 13-03-2020

Acts Referred:

Constitution Of India, 1950 — Article 136(2), 226
Armed Forces Tribunal Act, 2007 — Section 30, 31

Citation : (2020) 03 DEL CK 0296

Hon'ble Judges : Rajiv Sahai Endlaw, J; Sangita Dhingra Sehgal, J

Bench : Division Bench

Advocate : Shree Prakash Sinha, Anand Kumar, Marina Wheeler, Rajesh Gogna, Akshya, Aakanksha Kaul

Final Decision : Dismissed

Judgement

CM No.9800/2020 & CM No.9801/2020 (both for exemptions)

1. Allowed, subject to just exceptions.

2. The applications are disposed of.

W.P.(C) 2809/2020 & CM No.9799/2020 (for stay)

3. The petitioner, a Short Service Commissioned officer, having been denied permanent commission in Army, approached the Armed Forces Tribunal (AFT), New Delhi by way of OA No.410/2020, notice whereof was issued on 2nd March, 2020 but interim order sought, of allowing the petitioner to continue, declined. Aggrieved therefrom the petitioner has preferred this writ petition.

4. The counsel for the respondents appearing on advance notice has raised an issue qua the very maintainability of the petition. It is contended that the remedy of a writ petition is not available as per the dicta of the Supreme Court in Union of India Vs. Shri Kant Sharma (2015) 6 SCC 773. Attention is however drawn to Bal Krishna Sharma Vs. Union of India AIR 2020 SC 341, stating that

though the same has opened a window for the aggrieved persons to approach the High Court under writ jurisdiction, but only in the case of patent irregularity in the order of the AFT. It is contended that there is no such patent irregularity in the order of the AFT declining interim relief to the petitioner.

5. The counsel for the petitioner per contra has contended that since the impugned order is an interlocutory order and the remedy of appeal under Section 30 of the Armed Forces Tribunal Act, 2007 having been expressly barred, the petitioner would be left remediless if such petitions were not to be entertained. It is also contended that the option under Section 31 of the Act, of preferring a Special Leave Petition to the Supreme Court against the interlocutory order, is also barred by Article 136(2) of the Constitution of India.

6. On enquiry, we have been informed that this Bench, in the past, has been entertaining similar writ petition.

7. I have thus asked the counsel for the petitioner to address on the merits of the petition.

8. The counsel for the petitioner has contended that the Short Service Commission of the petitioner expired on 18th March, 2016 but the petitioner at that time was undergoing M. Tech. course in IIT, Madras and which was concluded only in August, 2017 and the petitioner was granted extension till then. It is further contended that after August, 2017, the petitioner was granted extensions vide communications dated 15th March, 2018, 14th September, 2018 and 15th March, 2019 at pages 73 to 75 of the paper book and the petitioner is to be discharged on 17th March, 2020.

9. The counsel for the respondents has contended that the petitioner applied for absorption in permanent commission in the ninth year of his Short Service Commission but did not submit the medical papers therewith; that the petitioner was granted extensions awaiting his medical papers and ultimately has not been found to be medically fit for absorption. It is also stated that the petitioner has been found in Low Medical Category P2, being suffering from primary hypertension and a decision has been taken not to absorb the petitioner in permanent commission.

10. The counsel for the petitioner has contended that the case of the petitioner for permanent absorption has not even been considered.

11. The counsel for the respondents contends that the Short Service Commission for ten years is extendable only for four further years and on 17th March, 2020, the fourteen years are expiring and the petitioner has not been considered for permanent commission owing to Low Medical Category.

12. The AFT, in the impugned order has denied interim relief reasoning, that the petitioner being a Short Service Commissioned Officer and having completed his contractual tenure and the petitioner, having been found to be in Low Medical Category, the case of the petitioner was not a fit case for granting interim

protection. It was further observed that if ultimately OA No.410/2020 is allowed, the petitioner can be granted all consequential benefits and thus the question of the petitioner suffering any irreparable loss did not arise and the balance of convenience was not in favour of the petitioner.

13. We are of the view that the reasons given by the AFT for denial of interim relief are cogent and do not require any interference in exercise of powers under Article 226 of the Constitution of India.

14. Dismissed.