
(2017) 12 DEL CK 0182

In the Delhi High Court

Case No : Civil Writ Petition No. 10892 Of 2017

Murari Lal Sharma And Anr

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 07-12-2017

Acts Referred:

Army Act, 1950 — Section 162, 165

Armed Forces Tribunal Act, 2007 — Section 3(o), 165

Citation : (2017) 12 DEL CK 0182

Hon'ble Judges : Hima Kohli, J; Rekha Palli, J

Bench : Division Bench

Advocate : Kirtiman Singh, Prateek Dhanda, Momin Khan, Waize Ali Noor

Final Decision : Disposed Of

Judgement

1. Two petitioners have filed the present petition for seeking relief in the present petition in respect of the petitioner No.1. Lieutenant Colonel S.S. Oberoi who has impleaded himself as petitioner No.2 in the present petition appears along with the petitioner No.1 and submits that he is here to assist the petitioner No.1 as the latter is not in a financial position to seek legal assistance for contesting his case.

2. We are of the opinion that simply because Lieutenant Colonel S.S. Oberoi hold a power of attorney from the petitioner No.1, he ought not to have impleaded himself in the present petition as petitioner No.2 as the relief prayed for is only by the petitioner No.1. At best, he could have sought liberty from the Court to address arguments on behalf of the petitioner No.1 and if the petitioner No.1 so desired, he had the option of approaching the Delhi High Court Legal Services Committee for granting him legal assistance, if eligible. In any event, the present petition could only be filed by the petitioner No.1, as the cause of action relates only to him.

3. Coming next to the maintainability of the present petition in this Court, we

may note that the Registry has listed the matter in Court with an objection with regard to its maintainability.

4. The petitioner No.1 prays for setting aside an order dated 30.01.2017, passed by the Central Government, rejecting his petition dated 13.11.2011 and for annulment of the proceedings of Summary Court Martial initiated by the respondents against him. A perusal of the record reveals that the petitioner No.1 had initially approached the Armed Forces Tribunal by filing OA No.203/2014, challenging inter alia, the order of conviction recorded by the Summary Court Martial that has dismissed him from service and awarded him a sentence of three months rigorous imprisonment. The petitioner had filed a Statutory Complaint against the said order whereupon it was clarified by the respondents that his application had been processed under Section 162 of the Army Act. The order dated 30.10.2015 passed by the Armed Forces Tribunal in the OA filed by the petitioner No.1 records that the Vice Chief of the Army Staff has converted the dismissal order passed against him into an order of discharge.

5. Noting that the petitioner had a remedy under Section 165 of the AFT Act, to file an application before the Chief of the Army staff to examine the proceedings of the court martial, the AFT has set aside the order dated 12.03.2014 passed by the respondents whereby the petitioner No.1's appeal under Section 165 of the Army Act was rejected, as not being maintainable and the Chief of the Army Staff or any prescribed officer was directed to examine the matter under Section 165 of the Army Act.

6. It is stated before us that under Section 3(o) of the Armed Forces Tribunal that defines the term, 'service matter' is clause (iv) that excludes matters relating to Summary Court Martial except where the punishment is of dismissal or imprisonment for more than three months. It is contended before us that as in the present case, the original punishment awarded against the petitioner No.1 has been converted into a simpliciter discharge and the punishment awarded by the Summary Court Martial is no longer of dismissal or imprisonment for a period of three months, the petitioner No.1 is not in a position to approach the Armed Forces Tribunal for ventilating his grievance.

7. We are not inclined to accept the said submission made on behalf of the petitioner No.1. In the present case, the punishment originally awarded by the Summary Court Martial to the petitioner was of dismissal from service with rigorous imprisonment of three months. Only subsequently, was the same converted into an order of discharge. In these circumstances, it cannot be stated that the present case falls under the exclusion clause of Section 3(o) of the Armed Forces Tribunal Act. In our view, the remedy of the petitioner would still lie before the Tribunal.

8. At this stage, liberty is sought by the petitioner No.1 to withdraw the present petition and approach the appropriate forum for relief. Leave as prayed for is granted. If the petitioner No.1 proposes to seek legal recourse before the Armed

Forces Tribunal, he shall be entitled to approach the Secretary, Delhi High Court Legal Services Committee for legal assistance which shall be so extended, if he is eligible.

9. The petition is disposed of.