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**(2021) 07 DEL CK 0073**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 6109 Of 2021

Ranjeet Singh

APPELLANT

Vs

Union Of India And Ors.

RESPONDENT

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**Date of Decision :** 05-07-2021

**Acts Referred:**

Army Rules, 1954 — Rule 51, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165

**Citation :** (2021) 07 DEL CK 0073

**Hon'ble Judges :** Rajiv Sahai Endlaw, J; Amit Bansal, J

**Bench :** Division Bench

**Advocate :** Tirbani Parshad, Harish Vaidyanathan Shankar, S. Bushra Kazim, Samir

**Final Decision :** Dismissed

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## **Judgement**

C.M. No. 19368/2021(for exemption)

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

2. The application is disposed of.

W.P.(C) 6109/2021 & C.M. No. 19367/2021 (for stay)

3. The petitioner, a Lieutenant Colonel in the respondents Indian Army and against whom a Summary General Court Martial (SGCM) was convened

and who has filed OA No.1063/2021 before the Armed Forces Tribunal (AFT), Principal Bench, New Delhi, impugning the order dated 3rd June, 2021

of the convening authority, directing re-assembly of the SGCM, has filed this petition impugning the order dated 1st July, 2021 of AFT, Principal

Bench, New Delhi, though issuing notice for 14th July, 2021 of the OA preferred by the petitioner, not granting any interim stay of the order dated 3rd

June, 2021.

4. The counsel for the petitioner, during the course of hearing has informed that though the SGCM was to re-assemble on 1st July, 2021 but did not re-assemble and is now scheduled to re-assemble on 7th July, 2021.

5. We have enquired from the counsel for the petitioner, the prejudice if any, which will be caused to the petitioner if the SGCM, re-assembly whereof has been challenged before the AFT, re-assembles. It is felt that if any merit is found by the AFT in the challenge by the petitioner to the order dated

3rd June, 2021, the re-assembly of the SGCM and/or the outcome if any thereof, shall be subject to the challenge made by the petitioner in the OA to

the order dated 3rd June, 2021 and which challenge is listed next before the AFT on 14th July, 2021.

6. The only prejudice which the counsel for the petitioner has agitated, is that the petitioner will have to undergo the proceedings before the same

SGCM. Much emphasis is laid by the counsel for the petitioner on the power of the convening authority to order re-assembly of SGCM. Reliance is

placed on Rule 51 of the Army Rules, 1954, to contend that the convening authority, which issued the order dated 3rd June, 2021, could have only

directed convening of another SGCM and could not have directed for the

7. We have enquired from the counsel for the petitioner, the difference between convening of another SGCM and re-assembly of

SGCM.

8. The counsel for the petitioner states that if another SGCM had been convened, the petitioner would have had all pleas available to it and the

order dated 3rd June, 2021 would not have been before the another SGCM convened.

9. We entertain doubts as to the aforesaid. Even if another SGCM had been convened, instead of the SGCM being ordered to be re-

assembled, the order directing another SGCM to be convened would be before such SGCM and thus it is not if that the another

SGCM would be oblivious of the reasons for which the another SGCM had been ordered.

10. The counsel for the respondents Indian Army appearing on advance notice has drawn attention to the Army Rules under the heading Section

5 - Summary General Courts-Martial and which inter alia provides that the

Rules earlier mentioned would not apply to SGCM, which would be subject to the Rules mentioned thereunder and whereunder Rules 151 to 165 are mentioned. He thus contends that the reliance by the counsel for the petitioner on Rule 51 is misplaced.

11. The counsel for the petitioner has also drawn our attention to Rule 157 to contend that the same does not authorise what has been done thereunder vide order dated 3rd June, 2021 impugned before the AFT.

12. As would be obvious from the above, for us to intervene in the order of the AFT refusing to grant the interim relief, would require interpretation of the Rules and/or application of the Rules and which interpretation, at least at this stage, does not appear to be dependant on any facts and would thus have to be final and would not be on a prima facie view and we would thus be usurping the jurisdiction otherwise vested in the AFT. Moreover, as aforesaid, even if any proceedings are undertaken by the reassembled SGCM, in the event of the AFT finding any merit in the challenge, can always be undone. On the contrary, stay of proceedings sought, in the event of no merit being found in the OA, would unnecessarily delay the proceedings of the SGCM. The balance of convenience is thus not in favour of the petitioner.

13. The counsel for the respondents Indian Army has also contended that the respondents Indian Army appearing on advance notice before the AFT on 1st July, 2021 had also objected to the maintainability of the OA in Delhi and AFT is to also pronounce on the said aspect.

14. We may mention that the order dated 1st July, 2021 of the AFT impugned before us is stated to be not available as yet and this petition has been preferred without producing a copy thereof before us and merely on the premise that the AFT verbally declined grant of any interim order. We thus today cannot state the reasons, which prevailed with the AFT for declining the interim relief.

15. However while correcting this order, we have found the impugned order on the website of AFT and find the AFT to have declined interim relief inter alia reasoning that (i) no case for granting interim relief at that stage, without even having the reply of the respondents, was made out; (ii) the impugned order dated 3rd June, 2021 directing re-assembly of SGCM had been made not only against the petitioner but also against Col. H.P.S. Sidhu who was not aggrieved therefrom and had not challenged the same; grant of any

stay would result in stalling SGCM not only against petitioner but also against the said Col. H.P.S. Sidhu; and, (iii) the petitioner had been unable to explain what prejudice would be caused to him by re-assembly of the same SGCM instead of convening of another SGCM.

16. We find the aforesaid reasoning of AFT to be well founded and do not detect any perversity therein requiring interference.

17. Once the petitioner has not been able to disclose any extreme prejudice which would be suffered in the event of non-grant of stay of the order

dated 3rd June, 2021, the proceedings even if any of the SGCM ordered to be re-assembled, can always be set aside and undone at a later date.

Resultantly, the petition is dismissed.