

(2025) 02 DEL CK 1172

In the Delhi High Court

Case No : Writ Petition (C) No. 2151 Of 2025

Sqn Ldr Mohd Aqib

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 19-02-2025

Acts Referred:

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

Army Act 1950 — Section 18

Navy Act 1957 — Section 15(1)

Citation : (2025) 02 DEL CK 1172

Hon'ble Judges : Navin Chawla, J;Shalinder Kaur, J

Bench : Division Bench

Advocate : Sudhanshu Shekhar Pandey, Himanshu Pathak, Sarvesh Srivastava, Amit Singh

Final Decision : Disposed Of

Judgement

Navin Chawla, J. (Oral)

CM APPL. 10109/2025 (Exemption)

1. Allowed, subject to all just exceptions.

W.P.(C) 2151/2025 & CM APPL. 10108/2025

2. This petition has been filed by the petitioner, challenging the order dated 11.02.2025 passed by the learned Armed Tribunal Forces, Principal Bench, New Delhi (in short, 'Tribunal') in Original Application, being O.A. 5262/2024, titled Sqn Ldr Mohd Aqib v. Union of India & Ors., whereby the learned Tribunal has rejected the prayer for the interim relief to the petitioner against his posting at Saraswa, Saharanpur District, State of Uttar Pradesh.

3. It is the case of the petitioner that the petitioner was commissioned into the Technical Branch of the Indian Air Force on 08.07.2012, and was posted at Yelahanka, Bangalore. He applied for pre-mature separation from service on

13.06.2023. The same was approved vide Order dated 21.09.2023, with his provisional PSS scheduled for 01.03.2024. However, just 13 days prior to his due date of pre-mature retirement, the petitioner was informed that his request for pre-mature separation had been cancelled vide Order dated 15.02.2024. Thereafter, the petitioner received an order whereby he was informed that he had been attached to D(I&T) from 02.04.2024. He was also informed that the respondents, vide Order dated 12.04.2024, had issued the terms of reference for a Court of Inquiry based on some complaint on allegation of the petitioner being involved in some private company and misusing his service position for financial gains. The Court of Inquiry proceedings have admittedly culminated in a report, which the petitioner claims to in June, 2024. On 04.11.2024, the petitioner was directed to join 30 Wing, AFS Sarsawa.

4. The petitioner aggrieved of the above, filed the above O.A. before the learned Tribunal, inter alia, praying for the following reliefs: -

“8. RELIEF (S) SOUGHT:

In view of the facts mentioned in Para 4 and 5 above, the Applicant prays that this Hon'ble Tribunal may be graciously pleased to allow the present application with exemplary costs by passing following orders/directions:-

(a) To can for the records including the copy of the Complaint, if any, Primary Investigation Report as issued by the LU Staff as well as SO Provost Report based on which the Respondents have issued orders dated 15.02.2024 cancelling the PSS to the Applicant, issuing order dated 12.04.2024 vide which ordering a C of I and conducting the C of I same in gross violation of Air Force Rule 156(2) as also Para 790 of the Air Force Regulation, denying promotion to the Applicant to the Rank of Wing Cdr and finally issuing the order dated 04.11.2024 without finalisation of the Court of Inquiry and thereafter thereafter quash and set aside the impugned Orders including the Court of Inquiry as also orders for cancellation of PSS and order denying promotion.

(b) Issue further directions to the Respondents to relieve the Applicant from all adverse consequences of the Impugned Court of Inquiry;

(c) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.”

5. The petitioner also prayed for the following interim reliefs: -

“(a) The Applicant respectfully submits that as per the Signal issued vide HQ dated 04.11.2024 issued by the Respondents, the Applicant is required to report at 30 Wg AFS Sarwasa w.e.f 10.02.2025 and the Col had last sat in mid July 2024 and until now there have been no information received by the Applicant.

(b) The Applicant has a good prima facie case, and the balance of convenience is also in his favour. Even otherwise the Applicant will suffer a gross inconvenience, harassment and hardship as well as the life of his family will be put to jeopardy if

the Respondents are allowed to continue with their illegal action against the Applicant which will also cause irreparable damage to the Applicant.

(c) In view of the above, it is graciously prayed that in the interest of justice this Hon'ble Tribunal may pass an interim order directing the Respondents to maintain the status quo ante as on date till further orders and also direct holding of the operation of the order dated 15.02.2024 in abeyance till further disposal of the present case keeping in view the hardship to which the Applicant will be exposed if such order is not passed."

6. The learned Tribunal has rejected the interim prayers of the petitioner by, inter alia, observing as under: -

"4. Having gone through the material available on record as filed by the applicant himself, we find that after his application for compassionate grounds, reports and inputs were received by the Air Force' authorities intelligence that while in service at Air Force Station, Yelahanka, Bangalore, the applicant was actively associated with a corporate entity M/s Blue Hat Solutions Private Ltd. which engages in activities such as weapon/equipment integration, modification, certification of aircraft operated by the Indian Air Force and Indian Navy and in the court of inquiry conducted, certain adverse material Was received against the applicant in, the, manner of improperly acting as an agent of this corporate entity prejudicial to the interest of the Air Force and, therefore, action, is being taken against him.

5. Be that as it may, at this stage, for the purpose of considering the prayer for interim relief, we are of the considered view that this issue needs not be gone into on merits. We have already Issued notice to the respondents with regard to the main prayer i.e. challenge to the cancellation of premature separation and the respondents are required to' file a detailed counter affidavit. There being serious allegations which are found to be established in a court of inquiry conducted, at this stage, it is not appropriate to evaluate the merits and consider the grievance, of the 'applicant to that extent. The only issue warranting consideration at this stage is as to whether the posting order of the applicant which is sought to be stayed falls within the jurisdiction of service matter as defined in Section 3(o) of APT Act, 2007 and this Tribunal has jurisdiction to stay the said order. Service matter as defined in Section 3(o) reads as under:-

"(o) "service matters", in relation to the persons subject to the Army. Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), mean all matters relating to the conditions of their service and shall include-

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure, including commission, appointment enrolment probation, confirmation, seniority, training, promotion, reversion, .premature retirement superannuation, termination of service and penal deductions;

(iii) summary disposal and trials where the punishment of dismissal is awarded;

(iv) any other matter, whatsoever; but shall not in relating to-

(i) orders issued under section 18 of the Army Act 1950 (46 of 1950) subsection (1) of section 15 of the Navy Act 1957 (62 of 1957) and section 18 of the Air Force Act, 1950 (45 of 1950); and

(ii) transfers and posting including the change of place or unit on posting whether individual or part of unit, formation or ship in relation to the persons subject to the Army Act 1950 (46 of 1950), the Navy Act 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950). (Emphasis supplied)

(iii) leave of any kind;

(iv) Summery Court Martial except where the punishment is .of dismissal or imprisonment for more than three months;

" 6. The definition consists of two parts; the first is the inclusive part and from sub clause (iv) onwards certain exclusive clauses have been incorporated, under sub clause (ii) of this exclusion clause, transfers and postings including change of place or unit on posting whether individually or as a part of unit, formation or ship are taken out of the jurisdiction of this Tribunal. This issue has been decided in various cases by this Tribunal and it is the consistent view, that as per the statutory jurisdiction conferred on this Tribunal transfers/postings etc. do not fall within the purview of "service matters" as defined under Section 3(0) 'and this Tribunal does not have jurisdiction to deal with such issue. That being so, we find much force in the preliminary objection raised by the respondents to the effect that once this Tribunal lacks jurisdiction to deal with the issue of posting of the applicant, even the power to grant interim stay of the said order is not available to this Tribunal. Accordingly, finding no case made out for granting any interim relief, the prayer for interim relief stands rejected for want of jurisdiction. Respondents my file their detailed' counter affidavit on the merits of the matter and thereafter the issue shall be decided on merits."

7. The learned counsel for the petitioner submits that the learned Tribunal has, in the Impugned Order, incorrectly observed that in the Court of Inquiry the petitioner has been found to be associated with a private company and that certain adverse materials was received against the petitioner in the manner of improperly acting as an agent of this company. He submits that the Court of Inquiry Report was neither presented before the learned Tribunal nor has still been acted upon by the respondents. Any such observation made, therefore, would prejudicially affect the outcome of the O.A. filed by the petitioner.

8. He further submits that though the Court of Inquiry Report was submitted to the Competent Authority way back in June 2024, and a final decision thereon has not been taken, while in the meantime, not only has the petitioner's approval for pre-mature separation been cancelled, but he has also been posted to Sarsawa. He submits that due to grave medical condition of petitioner's sister, whose legs

have been amputated, the petitioner would suffer grave irreparable injury as he has to report to the new place of posting.

9. He further submits that in any case, his posting and the cancellation of his pre-mature separation should be subjected to the outcome of the O.A. that is pending before the learned Tribunal.

10. Issue notice.

11. Notice is accepted by Mr.Himanshu Pathak, the learned counsel for the respondents.

12. He submits that the posting of the petitioner to Sarsawa is in the normal course and in accordance with the policy directives. He submits that the petitioner was posted to Bangalore at his own request, and such posting is only for a period of two years. The period having expired, the new posting orders were issued in a routine manner and are not connected with his request for pre-mature separation from service. He further submits that as far as the posting is concerned, the learned Tribunal has rightly observed that in terms of Section 3(o) of the Armed Forces Tribunal Act, 2007, it does not have the jurisdiction over the said issue. He submits that the petitioner is mixing two distinct causes of actions together in the form of one petition, which cannot be allowed.

13. We have considered the submissions made by the learned counsel for the parties.

14. From the above narration of facts and the submissions, it is apparent that the learned Tribunal has yet to consider the claim of the petitioner on the cancellation of his pre-mature separation from service. The observations made in the Impugned Order are merely prima facie and cannot, in any manner, bind or influence the learned Tribunal at the time of final adjudication of the O.A. that has been filed by the petitioner before it. Therefore, the fear of the petitioner that the observations made in the Impugned Order would influence the learned Tribunal in the final adjudication of the O.A., has no basis.

15. As far as the complaint of the learned counsel for the petitioner that the respondents having cancelled the grant of pre-mature separation of the service of the petitioner, cannot endlessly debt the same to the petitioner on the basis of an alleged complaint against the petitioner, we find merit in the same. The respondents should take an expeditious decision on the Court of Inquiry Report. The petitioner cannot be permanently made to suffer only because some complaint has been received by the respondents; it must culminate into an appropriate proceeding, if so warranted, or otherwise be closed.

16. Keeping in view the above, we direct the respondents to take a final decision on the Court of Inquiry Report and place the same before the learned Tribunal within a period of four weeks from today. On receipt of the copy of the Action Taken Report from the respondents, the learned Tribunal may again re-visit the request for the interim relief prayed by the petitioner and/or take a final decision

on the O.A. itself.

17. Needless to state, any action taken in the interim, including the cancellation of the pre-mature separation from service or the posting of the petitioner, shall be subject to the outcome of the O.A. which is pending adjudication before the learned Tribunal.

18. With the above observations and directions, the present petition is disposed of.

19. We make it clear that we have not interfered with the posting order of the petitioner, and the petitioner must report to the new place of posting in accordance therewith.