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“C.R.”

V. CHITAMBARESH & ASHOK MENON, JJ.

OP(AFT) No. 1 of 2019

Dated this the 2nd day of July, 2019

JUDGMENT

Chitambaresh, J.

An interlocutory order passed in an Original Application on the file of the Armed Forces Tribunal ('AFT' for short) is impugned in this Original Petition under Articles 226 and 227 of the Constitution of India. The AFT has declined to stay the operation of the order of Discharge of the petitioner from the services of the Defence Security Corps purely on health grounds. It is alleged that the petitioner is suffering from Obesity, Hypertension, Pre-diabetes and Chronic Kidney disease and that he did not tone up his health within the time stipulated. A preliminary objection is raised on behalf of the Union of India and others that an Original Petition of the nature is not maintainable against an interlocutory order. It is urged that the remedy of the petitioner is to file an appeal against the final decision of the AFT under Section 30 of the Armed Forces Tribunal Act, 2007 ('the Act' for short).

2. We heard Mr. P. Sreekumar, Advocate on behalf of the petitioner and Mr. Jaishankar V. Nair, Central Government Counsel at length.

3. The second proviso to Section 30 (1) of the Act is categorical that there shall be no appeal against an interlocutory order and that the same shall lie only against the final decision or order of the AFT. However the power of judicial review vested in this Court under Article 226 of the Constitution of India is not curtailed or circumscribed by the provisions of the Act. The law in this regard has been summarised in **Union of India and others v. Major General Shri Kant Sharma and another** [(2015) 6 SCC 773] which is extracted below:

“36. The aforesaid decisions rendered by this Court can be summarised as follows:

(i) The power of judicial review vested in the High Court under Article 226 is one of the basic essential features of the Constitution and any legislation including the Armed Forces Tribunal Act, 2007 cannot override or curtail jurisdiction of the High Court

OP(AFT) No. 1/2019

4

under Article 226 of the Constitution of India. (Refer: *L.Chandra Kumar and S.N.Mukherjee*)

(ii) The jurisdiction of the High Court under Article 226 and this Court under Article 32 though cannot be circumscribed by the provisions of any enactment, they will certainly have due regard to the legislative intent evidenced by the provisions of the Acts and would exercise their jurisdiction consistent with the provisions of the Act. (Refer: *Mafatlal Industries Ltd.*)

(iii) When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. (Refer: *Nivedita Sharma*)

(iv) The High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance. (Refer: *Nivedita Sharma*)"

But that does not mean that any and every interlocutory order can be assailed by invoking to Article 226 of the

OP(AFT) No. 1/2019

5

Constitution of India without due regard to the legislative intent evidenced by the Act.

4. An Original Petition under Article 226 of the Constitution of India can be entertained against an interlocutory order of the AFT for the limited purpose of examining the following:

(i) Whether there has been infraction of any mandatory provisions of the Act prescribing the procedure which has caused gross miscarriage of justice?

(ii) Whether there has been violation of the principles of natural justice which vitiates the entire proceedings or that the authority exercising the jurisdiction had not been vested with jurisdiction under the Act?

A reference to the decision in **Union of India and others v. Himmat Singh Chahar** [(1999) 4 SCC 521] is apposite and a resort to Article 226 of the Constitution of India cannot be

OP(AFT) No. 1/2019

6

had akin to the supervisory jurisdiction. The grounds urged in this Original Petition pertain to the health of the petitioner wherein it is stated that he had the same weight even at the time of entry in service. There is no whisper that there has been infraction of any mandatory provisions of the Act prescribing the procedure or there has been violation of the principles of natural justice. The petitioner at one stage even conceded that he is willing to get discharged with effect from 31.07.2019 instead of 30.06.2019 for the purpose of getting one increment. The petitioner has also no case that the respondents have exercised a jurisdiction not vested under the Act and therefore Article 226 of the Constitution of India is out of bounds.

5. Article 227 of the Constitution of India dealing with the power of superintendence by the High Court excludes any court or tribunal constituted by or under any law relating to the Armed Forces. Article 227 (4) of the Constitution of India is as follows:

**“227. Power of superintendence over
all Courts by the High Court -**

(1) x x x x x x x x

OP(AFT) No. 1/2019

7

(2) x x x x x x x x

(3) x x x x x x x x

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any Court or tribunal constituted by or under any law relating to the Armed Forces.”

Section 2 of the Act is explicit that it shall apply to all persons subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950 and the AFT has been established under Section 4 thereof. It follows that the High Court cannot exercise the power of superintendence over the AFT which is constituted under the law relating to the Armed Forces as explained above. The second proviso to Section 30 (1) of the Act barring an appeal against an interlocutory order of the AFT is in consonance with Article 227 (4) of the Constitution of India. The legislative intent is that the interlocutory orders of the AFT should not be corrected or interdicted by the power of superintendence of the High Court intermittently. The aggrieved person has to await the final decision or the order of the AFT in order to prefer an appeal under Sections 30 or 31 of the Act wherein

OP(AFT) No. 1/2019

8

the entire issues are at large. We should bear in mind that frequent interference over interlocutory orders of the AFT would undermine the discipline of the Armed Forces which has to be averted at any cost. The question whether the petitioner is liable to be discharged from services or not is a matter that can be agitated in the Original Application or in the appeal against the final decision. The petitioner has an effective alternate remedy and the Original Petition under Articles 226 and 227 of the Constitution of India cannot be entertained ignoring the statutory dispensation.

The Original Petition is dismissed. No costs.

**V. CHITAMBARESH
JUDGE**

**ASHOK MENON
JUDGE**

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