

AFR
Reserved

Case :- WRIT - A No. - 17043 of 2021

Petitioner :- Ram Harsh

Respondent :- Union Of India And 4 Others

Counsel for Petitioner :- Aftab Alam

Counsel for Respondent :- A.S.G.I.,Naresh Chandra
Tripahti

Hon'ble Anjani Kumar Mishra,J.

Hon'ble Vikram D. Chauhan,J.

(Per: Hon'ble Vikram D. Chauhan, J.)

1. The present writ petition is filed by the petitioner challenging the order dated 27th August, 2021 passed by the Armed Forces Tribunal (RB), Lucknow in Original Application No.475 of 2017. It is further prayed in the present writ petition to issue direction commanding the respondent authorities to pay interest at the rate of 18 % per annum on the arrears of pension and other retiral dues w.e.f. 7th August, 1991 to the date of actual payment of the aforesaid arrears of pension and other retiral dues.

2. The brief facts of the case arising in the present writ petition are that the petitioner was enrolled in the Army Medical Corps of Indian Army on 6th August, 1971 and was discharged from service on 20th April, 1997, being deserter. Being aggrieved, petitioner preferred Civil Misc. Writ Petition No.16478 of 2001 before this Court. Upon creation of the Armed Forces Tribunal, the same was transferred and renumbered as Transfer Application No.1469 of 2010. The aforesaid Transfer Application was allowed by the order dated 21st April, 2016 to the extent that the respondents were directed

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to pay pension and all other retiral benefits to the petitioner, considering him to be in service upto 6th August, 1991 within a period of three months. When the respondents did not comply with the aforesaid order, the petitioner preferred Execution Application No.173 of 2016. In execution proceedings on 29th May, 2017, the authorities concerned handed over the Pension Payment Order bearing No.5001122017 dated 28th June, 2017 and the petitioner was paid pension w.e.f. 28th June, 2017. Thereafter, the respondent authorities have paid all the retiral dues of the petitioner w.e.f. 7th August, 1991 in terms of PPO dated 26th May, 2017.

3. The petitioner thereafter, preferred Original Application No.475 of 2017 before the Armed Forces Tribunal, Regional Bench, Lucknow with the following prayers:-

“i. This Hon'ble Tribunal may kindly be pleased to issue a writ, order, rule or direction directing the respondents authorities specially the respondent no.4 to pay interest @ 18% per annum on account of delayed payment of pension other retiral dues such as Gratuity, G.P.F., Group Insurance, Commutation of pension, Leave encashment and arrears of pension etc. w.e.f. 08.11.1991 to the date of actual payment of the aforesaid retiral dues.

ii. This Hon'ble Tribunal may further be pleased to pass such other and/or further orders as deem fit, proper and necessary in the circumstances of this case.

iii. Award cost to the applicant.”

4. The above mentioned original application was contested by the respondents before the Tribunal below and the Tribunal below by impugned judgment dated 27th August, 2021 has dismissed the above mentioned original application of the petitioner.

5. It is the impugned order dated 27th August, 2021 passed

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by the Armed Forces Tribunal, Regional Bench, Lucknow, that is subject matter of challenge in the present writ petition.

6. Sri Naresh Chandra Tripathi, learned counsel appearing on behalf of respondents has raised a preliminary objection with regard to the maintainability of the writ petition under Article 226 of the Constitution of India on the ground that the petitioner has a statutory alternative remedy of filing an appeal under Sections 30 and 31 of the Armed Forces Tribunal Act, 2007 (*hereinafter referred to as the "Act No.55 of 2007"*) and in view of the aforesaid, the present writ petition is liable to be dismissed on the ground of alternative remedy. In this reference, Shri N.C.Tripathi has relied upon the judgment of the Apex Court in *Union of India Vs Major General Shri Kant Sharma and others*, reported in *2015 (6) SCC 773* and judgment dated 1st November, 2021 passed by this Court in *Writ-A No 15281 of 2021 – Ex-Hav Clerk (Stores) Ram Naresh Ram Vs Union of India and others* to contend that the present writ petition is not liable to be entertained on the ground of alternative remedy of filing an appeal being available to petitioner.

7. Confronted with the aforesaid preliminary objection raised on behalf of the respondents, the counsel for the petitioner has submitted that although there is an alternative remedy under Sections 30 and 31 of the Act of 2007, by way of preferring an appeal before the Hon'ble Supreme Court, however, on account of the pitiable condition of the petitioner, the aforesaid remedy would not be efficacious in the facts and circumstances of the case and as such, the writ petition is liable to be entertained. Counsel for the petitioner has placed reliance

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on the Full Bench judgment of this Court in ***Mahesh Chand Ex-LNK/CI Vs Union of India, 2014 (3) ESC 1614*** to contend that the powers of judicial review by the High Court under Article 226 of the Constitution of India cannot be abrogated by Armed Forces Tribunal Act. The counsel for the petitioner has further relied upon the judgement of the Apex Court in ***Balkrishna Ram Vs Union of India and another, 2020 (2) SCC 442*** in support of his submissions.

8. The Act No. 55 of 2007 has been enacted to provide for the adjudication or trial by the Armed Forces Tribunal of disputes and complaints with respect to commission, appointments, enrolment and conditions of service in respect of persons subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950 and also to provide for appeals arising out of orders, findings or sentences of court martial held under the said Acts and for matters connected therewith or incidental thereto.

9. The aforesaid Act No. 55 of 2007 under Section 4 provides for establishment of Armed Forces Tribunal to exercise the jurisdiction, powers and authority conferred on it by or under this Act. The jurisdiction of the Tribunal has been provided under Section 14 of the Act No. 55 of 2007. Section 14 provides that a person aggrieved by an order pertaining to any service matter may make an application to the Tribunal in relation to all service matters. Under Section 14(4) of the Act, the Tribunal is vested with the same powers as vested with the civil court while trying a suit in respect of matters enumerated under Section 14(4). It is further to be seen that the Tribunal is the authority under the aforesaid Act to decide both the

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questions of law and facts as may be raised before it.

10. The provisions of appeal under Sections 30 and 31 of the Act no 55 of 2007 is provided against an order passed by the Armed Forces Tribunal to the Supreme Court. It is not in dispute between the parties that the remedy of appeal is provided under the Act against the impugned order dated 27th August, 2021 passed by the Armed Forces Tribunal, Regional Bench, Lucknow. Further, Section 33 of the Armed Forces Tribunal Act provides for exclusion of the jurisdiction of the civil court.

11. It is trite of law that the power of judicial review vested in the High Court under Article 226 and 227 of the Constitution to exercise judicial superintendents over the decision of all Courts and Tribunals within the respective jurisdiction is also part of the basic structure of the Constitution. Broadly speaking, judicial review in India comprises three aspects: judicial review of legislative action, judicial review of judicial decisions and judicial review of administrative action. The present case pertains to judicial review of judicial decisions.

12. The jurisdiction under Article 226 of the Constitution of India is extraordinary and discretionary in nature. It is also to be noted that the powers to be exercised by the High Court under Articles 226 and 227 are constitutional powers and the same cannot be excluded by legislation. The Armed Forces Tribunal Act cannot curtail the powers under the grand-norm being the constitution. The legislations under the constitutional framework is required to be in consonance with the scheme of the Constitution specially the scheme of judicial review provided in the Constitution under Articles 226 and 32 of the

Constitution.

13. The Full Bench of this Court in ***Mahesh Chand Ex-LNK/CI Vs Union of India (supra)*** in paragraph 71 has held as follows:-

“(i) Our jurisprudence in over six decades since the adoption of the Constitution has evolved a clear, categoric and unambiguous recognition of the importance of judicial review by the Supreme Court under Article 32 and by the High Courts under Article 226. Judicial review is an indispensable safeguard to the preservation of liberty, freedom and to the realization of rights founded on the rule of law. Without constitutionally entrenched remedies, the realisation of fundamental constitutional rights would be illusory or, as Dr B R Ambedkar described it, a mere 'pious declaration': 'It is the remedy that makes a right real. If there is no remedy, there is no right of all, and I am therefore not prepared to burden the Constitution with a number of pious declarations which may sound as glittering generalities but for which the Constitution makes no provision by way of a remedy. It is much better to be limited in the scope of our rights and to make them real by enunciating remedies than to have a lot of pious wishes embodied in the Constitution. I am very glad that this House has seen that the remedies that we have provided constitute a fundamental part of this Constitution...'”⁵⁰

(ii) The power of judicial review of the Supreme Court and of the High Courts is firmly entrenched as a basic feature of the Constitution which lies beyond the amending power. Even more so, ordinary legislation cannot abrogate the constitutional power of judicial review that is vested in the Supreme Court under Article 32 and in the High Courts under Article 226;

(iii) The Armed Forces Tribunal Act, 2007 does not contain, either expressly or by necessary implication, any exclusion of the power

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of judicial review that is conferred upon the Supreme Court under Article 32 or upon the High Courts under Article 226. The legislation in fact contains a statutory recognition in Section 14 that the jurisdiction which is conferred upon the Armed Forces Tribunal is a jurisdiction in relation to service matters as defined in Section 3(o) as was exercisable by all courts and tribunals immediately before the appointed day, save and except the jurisdiction exercisable by the Supreme Court and the High Courts;

(iv) Having said this, it needs to be emphasised that the existence of jurisdiction and the nature of its exercise have distinct connotations in constitutional law. The Armed Forces Tribunal is constituted by legislation which provides for a specialized and efficacious administration of justice in matters falling within its jurisdiction under the provisions of the Act. This is coupled with the need to maintain discipline in the Armed Forces;

(v) The Armed Forces Tribunal is a court of first instance and ordinarily, matters which fall within the purview of its jurisdiction have to proceed for adjudication before the Tribunal and the Tribunal alone. Against the decision of the Tribunal, there is a statutory remedy of an appeal which is provided under Sections 30 and 31 to the Supreme Court;

(vi) Since a statutory remedy of an appeal is provided, the principles which are well established for the exercise of the jurisdiction under Article 226, would warrant that the High Court should be circumspect and careful while determining as to whether any case for the exercise of jurisdiction under Article 226 of the Constitution is made out;

(vii) The jurisdiction under Article 226 has not been abrogated as it could not have been, being a basic and essential feature of the Constitution.”

14. The Apex Court in ***Union of India v. Major General Shri Kant Sharma and another***, (2015) 6 SCC 773 has held as under:-

“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 under Article 226 of the Constitution of India.(Refer: L. Chandra Kumar [L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577] and S.N. Mukherjee [(1990) 4 SCC 594 : 1990 SCC (Cri) 669] .)

(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. [(1997) 5 SCC 536])

(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 [(2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947] .)

(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 [(2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947].)”

15. The Apex Court in ***Union of India v. Major General***

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Shri Kant Sharma (supra) has highlighted the anomalous situation that will be created in case the statutory alternative remedy is permitted to be bypassed. In this reference, attention is drawn to paragraph 43 and 44 of **Union of India v. Major General Shri Kant Sharma (supra)**:-

“Section 30 provides for an appeal to this Court subject to leave granted under Section 31 of the Act. By clause (2) of Article 136 of the Constitution of India, the appellate jurisdiction of this Court under Article 136 has been excluded in relation to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces. If any person aggrieved by the order of the Tribunal, moves the High Court under Article 226 and the High Court entertains the petition and passes a judgment or order, the person who may be aggrieved against both the orders passed by the Armed Forces Tribunal and the High Court, cannot challenge both the orders in one joint appeal. The aggrieved person may file leave to appeal under Article 136 of the Constitution against the judgment passed by the High Court but in view of the bar of jurisdiction by clause (2) of Article 136, this Court cannot entertain appeal against the order of the Armed Forces Tribunal. Once, the High Court entertains a petition under Article 226 of the Constitution against the order of the Armed Forces Tribunal and decides the matter, the person who thus approached the High Court, will also be precluded from filing an appeal under Section 30 with leave to appeal under Section 31 of the Act against the order of the Armed Forces Tribunal as he cannot challenge the order passed by the High Court under Article 226 of the Constitution under Section 30 read with Section 31 of the Act. Thereby, there is a chance of anomalous situation. Therefore, it is always desirable for the High Court to act in terms of the law laid down by this Court as referred to above, which is binding on the

High Court under Article 141 of the Constitution of India, allowing the aggrieved person to avail the remedy under Section 30 read with Section 31 of the Armed Forces Tribunal Act.

The High Court (the Delhi High Court) while entertaining the writ petition under Article 226 of the Constitution bypassed the machinery created under Sections 30 and 31 of the Act. However, we find that the Andhra Pradesh High Court and the Allahabad High Court had not entertained the petitions under Article 226 and directed the writ petitioners to seek resort under Sections 30 and 31 of the Act. Further, the law laid down by this Court, as referred to above, being binding on the High Court, we are of the view that the Delhi High Court was not justified in entertaining the petition under Article 226 of the Constitution of India.”

16. The Apex Court in ***Balkrishna Ram Vs Union of India (supra)*** has held as under:-

“1. Leave granted. One of the issues raised in this appeal is whether an appeal against an order of a Single Judge of a High Court deciding a case related to an Armed Forces personnel pending before the High Court is required to be transferred to the Armed Forces Tribunal or should be heard by the High Court.

14. It would be pertinent to add that the principle that the High Court should not exercise its extraordinary writ jurisdiction when an efficacious alternative remedy is available, is a rule of prudence and not a rule of law. The writ courts normally refrain from exercising their extraordinary power if the petitioner has an alternative efficacious remedy. The existence of such remedy however does not mean that the jurisdiction of the High Court is ousted. At the same time, it is a well settled principle that such jurisdiction should not be exercised when there is an alternative remedy available [Union of India v. T.R. Varma, AIR 1957 SC 882]. The rule of alternative remedy is a rule of discretion and not a rule of jurisdiction. Merely because the Court may not exercise its discretion, is not a ground to hold that it has no jurisdiction.

*There may be cases where the High Court would be justified in exercising its writ jurisdiction because of some glaring illegality committed by AFT. One must also remember that the alternative remedy must be efficacious and in case of a Non-Commissioned Officer (NCO), or a Junior Commissioned Officer (JCO); to expect such a person to approach the Supreme Court in every case may not be justified. It is extremely difficult and beyond the monetary reach of an ordinary litigant to approach the Supreme Court. Therefore, it will be for the High Court to decide in the peculiar facts and circumstances of each case whether it should exercise its extraordinary writ jurisdiction or not. There cannot be a blanket ban on the exercise of such jurisdiction because that would effectively mean that the writ court is denuded of its jurisdiction to entertain such writ petitions which is not the law laid down in *L. Chandra Kumar (supra)*.”*

17. It is further to be seen that the controversy involved before the Apex Court in the matter of ***Balkrishna Ram Vs Union of India and another (supra)*** was whether an appeal against an order of Single Judge of High Court deciding a case related to an Armed Forces personnel pending before the High Court is required to be transferred to the Armed Forces Tribunal or should be heard by the High Court.

18. A Division Bench of this Court in Writ- A No 15281 of 2021 by order dated 1st November, 2021 has considered a similar issue and held as under:-

*“5. The judgment in the case of *Balkrishna Ram (supra)* and judgment in the case of *Major General Shri Kant Sharma (supra)* both were rendered by Division Benches of Hon'ble Supreme Court. In the case of *Major General Shri Kant Sharma (supra)* the question considered by Hon'ble Supreme Court was as under :*

"Whether the right of appeal under Section 30 of the Armed

Forces Tribunal Act, 2007 against an order of Armed Forces Tribunal with the leave of the Tribunal under Section 31 of the Act or leave granted by the Supreme Court, or bar of leave to appeal before the Supreme Court under Article 136(2) of the Constitution of India, will bar the jurisdiction of the High Court under Article 226 of the Constitution of India regarding matters related to Armed Forces.?"

6. *The aforesaid question was specifically answered by Hon'ble Supreme Court in the aforequoted paragraphs 37, 38, 39 of the judgment.*

7. *The controversy involved before the Hon'ble Supreme Court in the case of Balkrishna Ram (supra) is reflected from the paragraph 2 of the aforequoted paragraph of the judgment which indicates that the question involved was "whether an appeal against an order of a single judge of a High Court deciding a case related to an Armed Forces personnel pending before the High Court is required to be transferred to the Armed Forces Tribunal or should be heard by the High Court. ?"*

8. *The question so framed was answered by Hon'ble Supreme Court with the observations made in paragraph 14 as aforequoted and ultimately the appeal was dismissed with the observations made in paragraph 19 of the judgment.*

9. *The question with respect to the interpretation of Section 30 of the Armed Forces Tribunal Act, 2007 was directly and essentially in issue and consideration by Hon'ble Supreme Court Union of India & Ors. Vs. Major General Shri Kant Sharma & Anr (supra) and it was held that no person has a right of appeal against the final order or decision of the Tribunal to the Supreme Court other than those falling under Section 30(2) of the Act, but it is statutory appeal which lies to the Supreme Court. Thus, against the impugned order the petitioner has a right of appeal before the Hon'ble Supreme Court under under Section 30 read with Section 31 of the Act. The judgment of Hon'ble Supreme Court in the case*

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of Balkrishna Ram (supra) reiterates the well settled principle of law with regard to the extraordinary and discretionary jurisdiction of High Court under Article 226 of the Constitution of India.”

19. The power of the High Court under Article 226 of the Constitution for judicial review of the order of the tribunal below is not curtailed or restricted in any manner. The remedy provided under Article 226 of the Constitution is a extraordinary and discretionary remedy.

20. It would be pertinent to add that the principle that the High Court should not exercise its extraordinary writ jurisdiction when an efficacious alternative remedy is available, is a rule of prudence and not a rule of law. The writ courts normally refrain from exercising their extraordinary power if the petitioner has an alternative efficacious remedy. The existence of such remedy however does not mean that the jurisdiction of the High Court is ousted. At the same time, it is a well settled principle that such jurisdiction should not be exercised when there is an alternative remedy available. The rule of alternative remedy is a rule of discretion and not a rule of jurisdiction. Merely because the Court may not exercise its discretion, is not a ground to hold that it has no jurisdiction.

21. It is further to be seen that from the decisions stated herein above, it is clear that the judicial review is part of the basic structure of the Constitution and the High Court under Article 226 of the Constitution is not denuded of its power of judicial review in view of Armed Forces Tribunal Act. The power of the High Court under Article 226 is discretionary and extraordinary and is to exercise with great caution. The exercise

of the powers of judicial review by the High Court under Article 226 of the Constitution will depend on the facts and circumstances of each case. The discretion under Article 226 of the Constitution is to be exercised by objective assessment of the plea of the petitioner that the statutory forum provided under the Armed Forces Tribunal Act is not efficacious remedy in the facts and circumstances of the case.

22. It is further to be seen that the case of the petitioner is that although there is an alternate remedy to approach the Hon'ble Supreme Court under Sections 30 and 31 of the Armed Forces Tribunal Act, 2007 however the petitioner has approached this Court under Article 226 of the Constitution as the remedy provided by way of appeal under Sections 30 and 31 of the aforesaid Act is not efficacious for the petitioner on account of the pitiable condition of the petitioner.

23. The petitioner on the basis of his condition has come up before this Court to exercise the extraordinary jurisdiction under Article 226 of the Constitution. In the writ petition, the petitioner claims that he was working as a sepoy (cook) in the Indian Army and further on account of his pitiable condition the remedy of appeal is not an efficacious remedy.

24. The pleadings are the foundation of litigation. In pleadings, the necessary and relevant particulars and material must be included and unnecessary and irrelevant material must be excluded. Pleadings in a particular case are the factual foundation on which the case of the litigant is based on. The pleadings should be specific in the petition and should disclose the complete cause of action for approaching the court. In case where the petitioner is praying for intervention of this court in

exercise of powers under Article 226 of the Constitution bypassing the statutory alternate remedy, it is the duty of the petitioner to bring complete facts and circumstances by way of pleadings in the writ petition as to why the remedy of appeal (statutory alternative remedy) is not an efficacious remedy in the facts and circumstances of the case. If the factual foundation for the cause of action in approaching the court is missing or is vague, then it is always open for the court to deny the relief to the petitioner/litigant in the facts and circumstances of the particular case.

25. In the present case, the factual foundation with regard to the remedy of appeal being not efficacious is pleaded in paragraph 4 and 35 of the writ petition and the same is quoted hereinbelow :-

“4. That the petitioner states that though he has an alternative remedy to approach Hon'ble Supreme Court by way of an appeal under section 30 and 31 of the Armed Forces Tribunal Act, 2007 against the impugned Order of the Hon'ble Tribunal but owing to his pity condition that remedy will not prove equally efficacious for him. He is an old person with various age related ailments and complications and aged about 73 years. His wife died on 29th May, 2017 in a road accident leaving him alone in this world as his two sons who are married are living separately and not with the petitioner. The copy of the Death Certificate of petitioner's wife dated 21st July, 2017 issued by Allahabad Municipal Corporation and the copy of the FIR bearing case crime Number 505 of 2017 under Section 279 and 304A IPC, Police Station-Dhoomanganj, District Allahabad lodged regarding the accidental death of petitioner's wife are being collectively filed herewith and marked as Annexure No.1 to the Writ Petition.

35. That the petitioner has an alternative remedy to approach the Hon'ble Supreme Court under Section 30 and 31 of the Armed Forces Tribunal Act, 2007 against the impugned order of the Hon'ble Tribunal but owing to his pity condition that remedy will not prove equally efficacious for him, therefore he is constrained to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, on the following amongst other grounds.”

26. A perusal of the aforesaid paragraph 4 and 35 of the writ petition would demonstrate that the petitioner has preferred the present writ petition and has sought the bypassing of alternative remedy on the ground that the petitioner is an old person with various age related ailments and complications and that his wife has expired on 29th May, 2017. The petitioner has also filed the death certificate of his wife as annexure 1 to the writ petition.

27. The primary ground for bypassing the alternative remedy and for entertaining the writ petition is that the petitioner is suffering from old age related ailments and complications. It is to be seen that the petitioner has not filed any medical certificate in support of his pleadings nor has brought on record any document to demonstrate that the petitioner is not physically fit to approach the Supreme Court. The petitioner has also not stated the details of the ailments on account of which the petitioner is seeking intervention of this court. It is also to be seen that the petitioner has not laid the foundation for bypassing the remedy of appeal in the writ petition nor has proved by documentary evidence that his physical condition is not such that the petitioner would be able to travel to New

Delhi.

28. The petitioner has also stated that the petitioner has two sons however they are not living with him. It is to be noted that the pleadings in respect of the sons not living with the petitioner are wholly vague in nature as the petitioner has not stated that his sons have refused to assist him in availing the statutory alternative remedy nor the petitioner has brought on record any evidence showing the place where the sons of the petitioner are residing.

29. The petitioner in the past has been contesting the litigation before the Armed Forces Tribunal, Lucknow whereas the petitioner is stated to be residing at Allahabad. Once the petitioner is in the position to contest the litigation at Lucknow then it was the duty of the petitioner to have brought on record the material circumstances which are preventing the petitioner from approaching the statutory alternative remedy of appeal before the Supreme Court and a bald allegation that the petitioner is suffering from ailment without giving any details of the ailments and without there being any material particulars about the plea of the petitioner, the plea of the petitioner cannot be accepted.

30. The country is witnessing a revolution in the digitalisation activity. The digitalisation is not only about implementation of technology. It encompasses the transformation of the courts and justice delivery system using technology in order to enable the experiences to be better, effective and within the reach of the ordinary citizens. The digitalisation is bridging the gap between the courts and the litigant. The process of digitalisation has enabled the litigant to

approach the various forum of justice delivery system and the issue of distance of the courts have been effectively addressed. The Apex Court has put in place various digitalisation processes including addressing the court through video conference. Further, with the advancement of technology and telecommunication including internet services the litigant is empowered to approach his counsel through telecommunication/Internet. The process of digitalisation and technology advancement has further been accelerated during the pandemic. The digitalisation and technology are playing a crucial role in ensuring the efficient last mile delivery of services to citizens. Even during the pandemic the courts have delivered justice to the citizens without the citizens being physically present at the place where the court is situated and in this respect the role of digital technology has been crucial. A citizen has all the means in place to approach the Supreme Court using the digital process and technology. The Internet, emails, e-filing and video conference have revolutionised the way a person can communicate and avail Justice. In the recent past, the country has witnessed “work from home” as an important tool for the working class and on the same footing various measures have been taken by the apex court for enabling the citizens to get “justice at doorstep” and the distance between the citizen and the apex court is of no consequence as a result of the digital process. The alternative digital channel being put in place by the Apex Court for justice delivery can always be availed by the petitioner to approach the statutory remedy under the Armed Forces Tribunal Act. Once the alternate channel is available to the petitioner by using

telecommunication and digital technology, the plea of the petitioner that the present writ petition may be entertained is not acceptable.

31. Once the petitioner has not demonstrated before this Court that there exists special circumstances and his physical disability is such that the petitioner is not in a position to approach the Apex Court, the writ petition cannot be entertained. A generalized and bald statement has been made by the petitioner in the writ petition with regard to his physical condition and ailment. However, no specific ailment has been described in the writ petition in order to permit this Court to assess the physical condition of the petitioner. On the basis of vague and bald statement, the petitioner cannot be permitted to bypass the alternative remedy of appeal.

32. In the result, we do not find any good reason to by-pass the statutory alternative remedy provided under the Armed Forces Tribunal Act, 2007. The writ petition is dismissed on the ground of statutory alternative remedy available to the petitioner leaving it open for the petitioner to file an appeal before the Hon'ble Supreme Court in accordance with the provisions of the Armed Forces Tribunal Act, 2007.

Order Date :-20.1.2022

Bhaskar

(Vikram D. Chauhan, J.) (Anjani Kumar Mishra, J.)