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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: October 11, 2022*

+ W.P.(C) 14385/2022 & CM APPL. 43902-43904/2022

IC-76585M MAJOR NISHANT KAUSHIK Petitioner
Through: Mr. Shree Prakash Sinha, Mr. Anand
Kumar, Mr. Rakesh Mishra and Mr.
Rishabh Gupta, Advocates

Versus

UNION OF INDIA AND ORS. Respondents
Through: Mr. Sushil Kumar Pandey, SPC with
Captain Lauv Kumar.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T (oral)

1. By way of the present petition, the petitioner challenges the final decision of the Armed Forces Tribunal (hereinafter referred as “**Tribunal**”) dated 10.08.2022 seeking the following reliefs: -

I. Quash the impugned order dated 10/08/2022 (Annexure-P/1) passed by the Learned Tribunal in O.A. No. 1606/2022, and

II. Set-aside the attachment order dated 16/07/2022 (Annexure-P/14) passed by respondent No.3, and

III. Set-aside the movement order dated 22/07/2022 passed by respondent No.6 (Annexure-P/17)

2. At the outset, we note that an independent Tribunal was constituted for due administration of justice and for disposal of large number of cases relating to the service matters of the three-armed forces of the Union pending since long time. In view thereof, a new enactment-The Armed Forces Tribunal Act, 2007 (hereinafter referred as ‘Act’) was enacted for redressal of the numerous pending complaints regarding service matters and appeals therefrom to provide for a speedier dispensation of justice in the most affordable manner. The relevant portion of the ‘Statement of Objects and Reasons’ of the Act are reproduced as under:

“The existing system of administration of justice in the Army and Air Force provides for submission of statutory complaints against grievances relating to service matters and pre and post confirmation petitions to various authorities against the findings and sentences of courts-martial. In Navy, an aggrieved person has a right to submit a complaint relating to service matters and has a right of audience before the Judge Advocate-General in the Navy in regard to the finding and sentence of a court-martial before the same are finally put up to the Chief of the Naval Staff.

2. Having regard to the fact that a large number of cases relating to service matters of the members of the above-mentioned three armed forces of Union have been pending in the courts for a long time, the question of constituting an independent adjudicatory forum for the Defence personnel has been engaging the attention of the Central Government for quite sometime. In 1982, the Supreme Court in Prithi Pal Singh Bedi v. Union of India, AIR 1982 SC 1413 held that the absence of even one appeal with power to review evidence, legal formulation, conclusion and adequacy or otherwise of punishment in the laws relating to the armed forces was a distressing and glaring lacuna and urged the

Government to take steps to provide for at least one judicial review in service matters. The Estimates Committee of the Parliament in their 19th Report presented to the Lok Sabha on 20th August, 1992 had desired that the Government should constitute an independent statutory Board or Tribunal for service personnel.

3. In view of the above, it is proposed to enact a new legislation by constituting an Armed Forces Tribunal for the adjudication of complaints and disputes regarding service matters and appeals arising out of the verdicts of the courts-martial of the members of the three services (Army, Navy and Air Force) to provide for quicker and less expensive justice to the members of said Armed Forces of the Union.

4. Establishment of an independent Armed Forces Tribunal will fortify the trust and confidence amongst members of the three services in the system of dispensation of justice in relation to their service matters.

5. The Bill seeks to provide for a judicial appeal on points of law and facts against the verdicts of courts-martial which is a crying need of the day and lack of it has often been adversely commented upon by the Supreme Court. The Tribunal will oust the jurisdiction of all courts except the Supreme Court whereby resources of the Armed Forces in terms of manpower, material and time will be conserved besides resulting in expeditious disposal of the cases and reduction in the number of cases pending before various courts. Ultimately, it will result in speedy and less expensive dispensation of justice to the Members of the above-mentioned three Armed Forces of the Union.”

3. As per Section 30 of the Act, all appeals of the present nature against the final decision or order of the Tribunal, shall lie before the Apex Court. There is no provision of an appeal against any such final decision or order of the Tribunal before any other forum(s) like the High Court(s).

4. Further, as per *Section 31* of the Act, such an appeal to the Apex Court shall lie within *30 days* from the date of the said decision of the Tribunal with the leave of the Tribunal or the Apex Court, as the case may be.

5. As such, according to us all final decisions or orders passed by the Tribunal can solely be challenged by an aggrieved party before the Hon'ble Supreme Court under *Section 30* of the Act and not before the High Court(s). The High Court is merely playing the role in a supervisory jurisdiction rather than sitting as a Court of appeal over such final decisions or orders passed by the Tribunal. We are fortified with the findings of a Co-ordinate Bench of this Court in *Wing Commander Shyam Naithani Vs Union of India & Ors.* 2022 SCC OnLine Del 769 wherein it has been held as under: -

“48. However, the Writ Court while examining the judgment/order passed by the Tribunal, will exercise the power of judicial review which means that the Court shall examine the decision-making process and interfere only for correcting errors of jurisdiction or errors apparent on the face of record or if the Tribunal acts illegally. (See: Hari Vishnu Kamath (supra); Surya Dev Rai (supra) and Rajendra Diwan versus Pradeep Kumar Ranibala and Anr. (2019) 20 SCC 143.)

49. This Court would like to emphasise, with all the power that it commands, that judicial restraint should be exercised when the reasons that a tribunal gives for its decision are being examined. Further, the writ jurisdiction of High Court cannot be exercised “in the cloak of an appeal in disguise”. (See: Rajendra Diwan versus Pradeep Kumar Ranibala and Anr., (2019) 20 SCC 143).”

6. As apparent therefrom, the scope of an appeal from a final decision or order of the Tribunal before the High Court is extremely limited and is restricted to the power of judicial review, which is to be exercised only when it is examining the decision-making process or when it is to interfere only for correcting the errors of jurisdiction or when it is for correcting errors apparent on the face of record or when the Tribunal acts illegally. Therefore, ordinarily no appeal from a final decision or order of the Tribunal can lie before the High Court.

7. Further in terms of *Section 34* of the Act, all pending matters, i.e., every petition, or other proceedings before any High Court or other forum(s) immediately before the date of establishment of the Tribunal under this Act, the cause of action whereon it is based, is such that it would have been within the jurisdiction of such Tribunal stood transferred before the Tribunal since its constitution.

8. Accordingly, the Tribunal is exercising the similar jurisdiction and discharging the same function as being exercised by the High Court. Thus, no appeal from the Tribunal can/should lie before the High Court.

9. Therefore, in view of the aforesaid, the present petition is not maintainable in the present form before this Court as the only remedy of challenging the final decision of the Tribunal lies before the Apex Court.

10. Be that as it may, as the petitioner is challenging the final decision dated 10.08.2022, for which the limitation expired on 09.09.2022, and though the present petition is not maintainable, we hereby dispose of the present petition alongwith pending applications, by giving liberty to the

petitioner to move an appropriate application under *Section 32* of the Act before the Hon'ble Supreme Court.

(SURESH KUMAR KAIT)
JUDGE

(SAURABH BANERJEE)
JUDGE

OCTOBER 11, 2022
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