

Wing Commander Shyam Naithani vs Union Of India & Ors on 19 July, 2021

Author: Rajiv Sahai Endlaw

Bench: Rajiv Sahai Endlaw, Amit Bansal

\$~2, 9, 12 and 14 to 18.

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 6483/2021, C.M. No. 20367/2021 (for stay)

WING COMMANDER SHYAM NAITHANI Petitioner

Through: Mr. Ankur Chhibber, Advocate.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Vikram Jetly, CGSC for UOI
along with Wing Commander
Shailesh Sharma, Law Officer of the
respondents.

+ W.P.(C) 1145/2021

EX AC ASHOK KUMAR DUBEY Petitioner

Through: Mr. Randhir Kalkal, Advocate.

versus

UNION OF INDIA & ORS. Respondents

Through: Ms. Shubhra Parashar and Mr.
Virender Pratap Singh Charak,
Advocates along with Wing
Commander Shailesh Sharma, Law
Officer of the respondents

+ W.P.(C) 5273/2021, C.Ms. No. 16227/2020 (for stay) & 18656/2021
(for interim directions)

WG CDR VIDHU SINGH Petitioner

Through: Mr. Ankur Chhibber, Advocate.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Harish Vaidyanathan Shankar
and Mr. Syed Husain Adil Taqvi,
Advocates Wing Commander

W.P.(C) 6483/2021 & connected matters

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Shailesh Sharma, Law Officer of the
respondents.

+ W.P.(C) 1239/2020

COL B VENKAT

Through:

..... Petitioner
Mr. Indra Sen Singh and Ms. Kirtika
Chhatwal, Advocates.

versus

UNION OF INDIA & ORS.

Through:

..... Respondents
Mr. Anurag Ahluwalia, CGSC with
Mr. Abhigyan Siddhant, Advocate
along with Wing Commander
Shailesh Sharma, Law Officer of the
respondents.

+

W.P.(C) 8171/2020
AMAR SINGH EX NB SUB & ORS.

Through:

..... Petitioners
Mr. Indra Sen Singh and Ms. Kirtika
Chhatwal, Advocates.

versus

UNION OF INDIA & ORS.

Through:

..... Respondents
Wing Commander Shailesh Sharma,
Law Officer of the respondents

AND

+

W.P.(C) 9627/2020
COL MUKUL DEV

Through:

..... Petitioner
Counsel for the petitioner (appearance
not given.)

versus

UNION OF INDIA & ORS.

Through:

..... Respondents
Ms. Suparna Srivastava, CGSC with
Mr. Tushar Mathur, Advocate along

W.P.(C) 6483/2021 & connected matters

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with Wing Commander Shailesh
Sharma, Law Officer of the
respondents.

AND

+

W.P.(C) 813/2021
LT COL AJAY DOGRA

Through:

..... Petitioner
Mr. Indra Sen Singh and Ms. Kirtika
Chhatwal, Advocates.

versus

UNION OF INDIA & ORS.

Through:

..... Respondents
Wing Commander Shailesh Sharma,
Law Officer of the respondents

AND

+ W.P.(C) 1720/2021, C.Ms. No. 4963/2021 (for interim relief) &
4964/2021 (for permission to file lengthy list of dates)
EX CPL MADAN KUMAR SINGH Petitioner
Through: Mr. Akshya Dev, Advocate.

versus

UNION OF INDIA & ORS. Respondents
Through: Wing Commander Shailesh Sharma,
Law Officer of the respondents

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MR. JUSTICE AMIT BANSAL
ORDER

% 19.07.2021
[VIA VIDEO CONFERENCING]

C.M. No.3237/2021 (for exemption) in W.P. (C) No.1145/2021, C.M. No. 16228/2021 (for exemption) in W.P. (C) No. 5273/2021, C.M. No. 2086/2021 (for exemption) in W.P. (C) No. 813/2021 & C.M. No. 4965/2021 (for exemption) in W.P.(C) No. 1720/2021

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

2. The applications are disposed of.

W.P.(C) 6483/2021 & C.M. No. 20367/2021 (for stay), W.P.(C) 1145/2021, W.P.(C) 5273/2021 & C.Ms. No. 16227/2020 (for stay) & 18656/2021 (for interim directions), W.P.(C) 1239/2020, W.P.(C) 8171/2020, W.P.(C) 9627/2020, W.P.(C) 813/2021 and W.P.(C) 1720/2021 & C.Ms. No. 4963/2021 (for interim relief) & 4964/2021 (for permission to file lengthy list of dates)

3. The common question entailed in all these petitions is, the maintainability of a petition under Article 226 of the Constitution of India with respect to a final order of the Armed Forces Tribunal (AFT) in an application under Sections 14 and 15 of the Armed Forces Tribunal Act, 2007.

4. It is not possible to hear the counsels today.

5. The counsel for the petitioner in W.P. (C) No.813/2021 states that the petitioner withdraws the petition to pursue other remedies in accordance with law.

6. The counsel for the respondents cannot have and has no objection.

7. The petition is dismissed as withdrawn with liberty to the petitioner therein to avail of remedies in accordance with law.

8. Urgency is expressed by the counsel for the petitioner in W.P.(C) 6483/2021.

9. Vide order dated 14th July, 2021 in W.P.(C) 6483/2021, we had noted the argument of the counsel for the petitioner therein, of the prejudice which would be caused to the petitioner, if interim relief is not granted or if the General Court Martial is convened.

10. The counsel for the petitioner in W.P.(C) 6483/2021 has today also taken us to Rule 156 (2) of the Air Force Rules, 1969 and has contended that the Court of Inquiry has violated the same. It is contended that several witnesses had already been examined prior to the petitioner being summoned by the Court of Inquiry. It is also argued that the Administrative Member of the Court of Inquiry himself joined after several sittings had already been held and though not present therein, signed the proceedings sheets of the earlier sittings of the Court of Inquiry, as admitted in the reply to the O.A. filed before the AFT also. Today again, it is reiterated that as per Union of India Vs. Virendra Kumar (2020) 2 SCC 714, the objection in this regard, if not immediately taken, is not available once the General Court Martial is convened and till the conclusion thereof.

11. Wing Commander Shailesh Sharma, Law Officer of the respondents Indian Air Force has informed that, (i) the Court of Inquiry was in the nature of a fact finding body, to go into the question of a helicopter shot down immediately after the Balakot strike; (ii) the petitioner was cited as one of the witnesses in the said Court of Inquiry; (iii) however some of the witnesses examined by the Court of Inquiry deposed against the petitioner;

(iv) the Court of Inquiry proceedings are followed by recording of summary of evidence and which process is still going on and takes at least 3-4 months' time; (v) after the recording of summary of evidence, the file is to be put before the Authority competent to convene the Court Martial, who takes an independent decision whether to convene a Court Martial or not and against whom; (vi) the General Court Martial which the petitioner is apprehending against himself and on commencement of which, the petitioner contends that he will lose the right to agitate the irregularities during the Court of Inquiry, is still a far cry; and (vii) the proceedings of summary of evidence are read by the General Court Martial, if convened, only if there is a plea of guilty; else the General Court Martial records evidence independently and takes decision on the basis thereof and not on the basis of any proceedings of the Court of Inquiry or of the summary of evidence.

12 We are also of the view that even if Virender Kumar supra states that it is not open to take plea as aforesaid, after the Court Martial is convened, once the petitioner is found to have taken the plea at the earliest, the delay, if any in adjudication thereof cannot be to the prejudice to the petitioner.

13. We therefore do not find any need to grant any interim order at this stage. However, if before this petition is considered, the proceedings of summary of evidence are concluded and there is a fear of Court Martial being convened, the petitioner shall have liberty to apply.

14. List all the petitions for consideration of the common legal question, on 14th September, 2021.

RAJIV SAHAI ENDLAW, J AMIT BANSAL, J JULY 19, 2021 A