

W.A. No.107 of 2016**28.04.2016**

Shri Hemant Shrivastava, Advocate for the appellant.

Shri K.C.Ghildiyal, Advocate for the respondent No.1.

Heard counsel for the parties.

This writ appeal takes exception to interlocutory order dated 9.2.2016 passed by learned Single Judge in W.P.No.12785/2015. While answering the preliminary objection regarding maintainability of writ petition, the learned Single Judge following the dictum of the Supreme Court in the case of **Major M.R. Penghal vs. Union of India and others, (1998) 5 SCC 454**, in particular paragraph No.9 thereof, has opined that since the writ petitioner was an Army Officer and only on deputation in the appellant Department (Civil Service), he continued to have lien over the parent post in the Army Establishment and for which reason the remedy before the Central Administrative Tribunal was unavailable to him against the order passed by the

appellant to repatriate the writ petitioner to his parent Department. Although the learned Single Judge has not specifically adverted to section 3(o) of the Armed Forces Tribunal Act 2007, *prima facie*, it is noticed that the orders of transfer and posting including the change of place or unit on posting whether individually or a part of unit is not encompassed by the definition of service matter for the purpose of maintaining proceedings before Armed Forces Tribunal.

The argument of the appellant, however, is that the order of repatriation passed by the appellant is not ascribable to the provisions of Army Act, 1950, Navy Act 1957 and Air Force Act, 1950 having been passed by the appellant (being autonomous institution of Government of India and Civil Department).

Therefore, the question is: whether the writ petitioner would continue to have lien on his parent post in Armed Forces to be entitled to maintain proceedings before the Armed Forces Tribunal and if the said proceedings related to transfer and posting matter which includes repatriation as is contended, it would be

excluded from the definition of service matters. These are all issues which can be finally answered during the hearing of the writ petition. For the time being, we are in agreement with the opinion of the learned Single Judge that the writ petition filed by the respondent No.1 before the High Court was maintainable in the peculiar facts of the present case.

Appeal is **disposed of** accordingly.

Writ petition to proceed for further hearing.

After this order is dictated, counsel for the appellant insisted for noting his argument on the basis of instructions issued by the Armed Head-quarters, which, in fact, were relied by the private respondent (writ petitioner) in support of his stand. However, the said instructions cannot be the basis to disregard the cardinal principle of service jurisprudence that the person who is on deputation would retain his lien on the parent post in the parent Department. No statutory provision to the contrary has been brought to our notice, which may persuade us to accept the proposition stated in the instruction Nos.4, 5 and 6 pressed into service by

appellant. Even this question can be closely examined by the learned single Judge at the appropriate stage.

Ordered accordingly.

(A.M. Khanwilkar)
Chief Justice

(J.P. Gupta)
Judge

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