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

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W.P.(C) 2433/2003

DHARAMBIR KANKER

.....Petitioner

Through: Mr. Kartik Dabas, Ms. Priyanka  
Sachdeva and Mr. Yugansh  
Sharma, Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Tanveer Ahmed Ansari,  
SPC with Major Anish  
Muralidhar.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**HON'BLE MS. JUSTICE SHALINDER KAUR**

**ORDER**

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**11.12.2024**

1. A preliminary objection has been taken by the learned counsel for the respondents by contending that as a punishment of dismissal from service was imposed on the petitioner by the Summary Court Martial ('SCM'), and as it is a case pertaining to service matter which is subject to the Army Act, therefore, the present petition would have to be transferred to the learned Armed Forces Tribunal ('AFT') for adjudication.

2. The learned counsel for the petitioner, however, has drawn our attention to the Judgment of this Court in *Ex Link Vishav Priya Singh v. Union of India*, NC:2018:DHC:3488-DB, wherein, this Court has already rejected the said preliminary submission by observing as under:



*“13. Having heard the learned counsel for the parties, the first and the foremost issue that needs to be decided is whether the present petition is not maintainable in this Court in view of Section 3(o) of the AFT Act, as it is the submission of Ms. Babbar that the issue herein relates to a service matter that too concerning persons subject to Army Act where the punishment is of dismissal or imprisonment for more than three months. In that regard, the answer to the said issue lies in her own submission, inasmuch as she had stated that the matters, which shall not have the jurisdiction of AFT, are those relating to Summary Court Martial except where punishment is of dismissal or imprisonment for more than three months. In the case in hand, even though initially it was a case of dismissal with imprisonment of six months, the dismissal was reduced to discharge. Even otherwise, initially the writ petition was disposed of by this court on an issue whether the SCM need to be held by the CO of the unit or any other unit on January 25, 2008. The said order was subject matter of an Appeal before the Supreme Court, which decided the issue vide order dated July 05, 2016 in favour of the respondents but at the same time remanded the matter back to this Court for consideration on merits. The Supreme court having remanded the matter back to this court, this Court shall have the competence to decide the matter on merits. Hence, this plea of Ms. Babbar is rejected.”*

3. This Court had noted that even in the case of petitioner therein, the writ petition was disposed of by this Court *vide* its Judgment dated 25.01.2008. Thereafter, the same was challenged by the respondents therein in the form of an appeal before the Supreme Court, which was allowed *vide* its Judgment dated 05.07.2016, by setting aside the Judgement passed by this Court and remanding the petition back to



this Court for a fresh adjudication. The facts of the present petition are, therefore, identical to that of *Ex Link Vishav Priya Singh* (supra).

4. This Court having already formed an opinion that the writ petition would be maintainable in view of the above peculiar facts, the preliminary objection raised by the respondents is hereby rejected.

5. The respondents shall have the record of the SCM produced before us on the next date of hearing. Inspection of the same shall be allowed to the counsel for the petitioner by the learned counsel for the respondent, at least two weeks in advance of the next date of hearing.

6. List for hearing on 24<sup>th</sup> February, 2025 at 02:30 P.M.

**NAVIN CHAWLA, J**

**SHALINDER KAUR, J**

**DECEMBER 11, 2024/sds/sk/as**

*Click here to check corrigendum, if any*