

ITEM NO.18

COURT NO.1

SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 1121/2023

ARMED FORCES TRIBUNAL BAR ASSOCIATION CHANDIGARH BENCHPetitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(FOR ADMISSION and IA No.205681/2023-EX-PARTE STAY)

Date : 13-10-2023 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA

For Petitioner(s) Mr. K. Parameshwar, Adv.
 Mr. MV Mukunda, Adv.
 Mr. Mithun Shashank, Adv.
 Mr. Nishanth Patil, Adv.

For Respondent(s) Mr. R. Venkataramani, AGI
 Mr. R. Bala, Sr. Adv.
 Mr. Chitvan Singhal, Adv.
 Ms. Sonali Jain, Adv.
 Mr. Abhishek Kumar Pandey, Adv.
 Mr. Raman Yadav, Adv.
 Mr. Sachin Sharma, Adv.

UPON hearing the counsel the Court made the following
O R D E R

- 1 In pursuance of the directions which were issued by this Court on 9 October 2023, a report has been submitted to this Court by the Chairperson of the Armed

Forces Tribunal¹ indicating the circumstances in which the transfer of Shri Justice Dharam Chand Chaudhary was made from the Regional Bench at Chandigarh to the Regional Bench at Kolkata. The Chairperson has set out, in detail, the circumstances which weighed with him in effecting the transfer. The relevant part of the report of the Chairperson of the AFT is extracted below :

“In the North-east, both the Regional Benches i.e. at Kolkata and Guwahati were not functioning on regular basis for a considerable period of time. Regional Bench, Kolkata is not functioning on regular basis since 07.07.2016. Presently, one Administrative Member is already posted there since 21.12.2022, but bench is still non functional due to non-availability of a Judicial Member. Regional Bench, Guwahati is also not functioning on regular basis since 18.08.2019. Presently, one Administrative Member is already posted since 19.12.2022, but bench is still non-functional due to non-availability of a Judicial Member. It is informed that the Government has already initiated the process to fill up the vacant posts of Judicial Member at Kolkata and Guwahati, which may consume some time. Consequently, there has been a judicial vacuum in the north-eastern part of the country as both the Benches at Kolkata and Guwahati were not regularly functioning. As an *ad hoc* arrangement, Judicial members were nominated, from time to time from Delhi and Lucknow Benches to hold the Court at Kolkata and Guwahati for hearing the urgent matters. It would also be pertinent to report that consequent upon the resignation of one Judicial Member from Principal Bench and superannuation of one Judicial Member from Lucknow Bench, Principal Bench and Lucknow Bench are also facing difficulty in continuing with the *ad hoc* arrangement.

To make Kolkata and Guwahati Benches functional, it was decided to transfer one Senior Judicial member to Kolkata Bench temporarily, who can also be requested to take care of the Guwahati Bench on rotational basis.

Recently, one Administrative Member, namely, Vice Admiral H.C.S. Bisht tendered his resignation letter dated 30.08.2023 to be effective from 01.10.2023 (*Annexure-VIII*). Resultantly, there were **03 Judicial Members** against **02 Administrative Members** left in RB, Chandigarh.

1 “AFT”

Except for RB, Chandigarh, there was no other Judicial Member in excess of the Administrative Members at all the Benches of the Armed Forces Tribunal. The complete Bench-wise list of Members as on 08.10.2023 is annexed herewith for kind perusal (*Annexure-IX*).

Out of three Judicial members at Chandigarh Bench, Justice Shekhar Dhawan was transferred from Jammu to Chandigarh Bench on medical grounds on 03.03.2023 and consequently, he could not have been transferred on account of his precarious medical condition (*Annexure-X*). The other Judicial Member, Justice Sudhir Mittal recently joined AFT on 06.06.2023 and he also could not have been transferred. Therefore, Justice Chaudhary being the senior-most and experienced Member at AFT Chandigarh was transferred to Kolkata temporarily till the post of Judicial Member is filled up at RB, Kolkata by the Government."

- 2 There is no reason for this Court to doubt the exercise of administrative discretion by the Chairperson of the AFT on the above grounds. The posting of members to different benches lies within the administrative control of the Chairperson.
- 3 We had issued notice by the previous order in view of the submissions which were made on behalf of the petitioners which were recorded in the order. At this stage, it is necessary to clarify that the Chairperson of the AFT has stated in his report that :

"Besides the above said reasons which compelled me to transfer Justice Chaudhary from Chandigarh Bench to Kolkata Bench, I would also seek indulgence of the Hon'ble Apex Court to clarify that the allegations that all execution applications have been transferred to the Principal Bench is factually incorrect. To put the record straight, it is humbly reported that no execution applications has been transferred from any of the regional benches. However, a direction to list the Execution Applications pending with Principal Bench before Court No.1 was passed by the undersigned on account of re-allocation of work because of resignation of one of the Judicial Member, namely, Ms Justice Anjana Mishra."

- 4 The Chairperson of the AFT has also clarified that Shri Justice Chaudhary has been transferred from the AFT Chandigarh to Kolkata temporarily till the post of Judicial Member is filled up at the Regional Bench at Kolkata by the Government. The transfer order does not expressly contain such a condition.
- 5 In view of what has been stated in the report which has been submitted by the Chairperson of the AFT which is accepted, we have come to the conclusion that the administrative discretion which has been exercised to transfer Shri Justice Dharam Chand Chaudhary from the Regional Bench at Chandigarh to the Regional Bench at Kolkata does not warrant interference under Article 32 of the Constitution.
- 6 The Writ Petition, insofar as prayer clause (i) is concerned, is rejected.
- 7 However, we grant time to the Union of India to file its response to the reliefs which have been sought in prayer (ii) of the petition. Counter affidavit be filed within a period of three weeks.
- 8 List on 10 November 2023.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR