

ITEM NO.7 Court 4 (Video Conferencing) SECTION XVI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No.14374/2021

(Arising out of impugned final judgment and order dated 29-06-2021 in WP(C) No.1104/2021 passed by the High Court of Jammu & Kashmir at Srinagar)

MOHAMMAD MEHRAJ UD DIN KHAN

Petitioner(s)

VERSUS

UNION TERRITORY OF J AND K & ORS.

Respondent(s)

(With appln.(s) for I.R. and IA No.115752/2021-EXEMPTION FROM FILING O.T.)

Date : 24-09-2021 This petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MRS. JUSTICE B.V. NAGARATHNA

For Petitioner(s)

Mr. Keshav Thakur Adv.
Mr. Mahesh Prasad, Adv.
Mr. Shikhar Sardana, Adv.
Mr. Ajay Singh, Adv.
Mr. Babu Malayil, Adv.
Mr. Rajesh Singh Chauhan, AOR

For Respondent(s)

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

- 1 By an order dated 29 July 2020, the Government of Jammu and Kashmir in the General Administration Department subjected the petitioner to a major penalty of removal from service with effect from 29 November 2018.
- 2 The petitioner instituted SWP No 3447 of 2019 before the High Court which was transferred to the Jammu Bench of the Central Administrative Tribunal and re-numbered as Transfer Application No 4846 of 2021. The Tribunal dismissed the TA by its order dated 25 March 2021. The order of the Tribunal has been affirmed by the Division Bench of the High Court of Jammu and Kashmir at Srinagar by its order dated 29 June 2021.
- 3 Mr Keshav Thakur, counsel appearing on behalf of the petitioner has drawn the attention of the Court to the following observation contained in the order of the Tribunal:

“The only controversy is about the correctness of DOB of applicant, in SR.”
- 4 Counsel for the petitioner submits that the challenge before the Tribunal was to the penalty of removal from service, whereas the Tribunal proceeded on the basis that the application before it was for a change in the date of birth from 9 November 1958 to 9 November 1961. Hence, it has been urged that the challenge to the penalty of removal has not been independently assessed by the Tribunal.
- 5 A copy of the original writ petition, SWP No 3447 of 2019 which was transferred to the CAT has not been placed on the record of these proceedings. However, it does appear from a reading of paragraph 5 of the judgment of the Tribunal that it proceeded on the basis that the only controversy was about the correctness of the date of birth of the petitioner in

the service records.

- 6 When the matter was carried to the High Court by filing a writ petition to challenge the order of the Tribunal, the High Court in paragraph 3 of its order observed as follows:

“The Tribunal by the aforesaid judgment and order has dismissed the transfer application No.4846 of 2021 arising out of the SWP No.3447/2019 filed by the petitioner for the correction of his date of birth in the service record.”

- 7 The above narration of the High Court indicates that the High Court, like the Tribunal, proceeded on the basis that the matter pertained to the correction of the date of birth in the service record. Of course, it would be necessary to note that the penalty of removal from service was based on an alleged interpolation in the service records of the date of birth of the petitioner. Be that as it may, the submission of the petitioner is that the challenge to the disciplinary penalty has not been dealt with either by the Tribunal or by the High Court.
- 8 In view of the above grievance, we grant liberty to the petitioner to move the High Court by way of review. If a review petition is filed within a period of four weeks from today, we would request the High Court to take it up expeditiously. We clarify that we have made no observation on the merits of the grievance of the petitioner which shall be considered by the High Court based on the submissions made before it.
- 9 The Special Leave Petition is disposed of in terms of the above observations.
- 10 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)
A.R. - cum - P.S.

(SAROJ KUMARI GAUR)
Court Master