

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 243/2022

GROUP CAPTAIN VIKAS SAREEN

PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

RESPONDENT(S)

O R D E R

The present Writ Petition under Article 32 of the Constitution of India in the form of Public Interest Litigation has been filed by the petitioner for the following reliefs.

"I) Issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, direction or order directing the Respondent No. 1 to issue a necessary notification thereby extending the age of superannuation of the Group Captains of F(P) & F(N) branch from 54 years to 57 years at par with Group Captains in the Ground Duty Branch of the Indian Air Force.

II) Pass any other any further order which this Hon'ble Court may deem fit and proper in the circumstances of the case."

At the time, when this Court issued notice on 25.04.2022, it was the case on behalf of the petitioner that despite the earlier order passed by the Armed Forces Tribunal (AFT) directing the Union of India / Ministry of Defence (MoD) to take an appropriate decision on whether the retirement age would be 54 years or 57 years, no decision has been taken by the Union of India / MoD and it was submitted that every month 5 to 6 Group Captains (Time-Scale) F (P&N) are retiring and / or superannuation at the age of 54 years only because of the inaction on the part of the

Contd..

Ministry of Defence. This Court in order dated 25.04.2022 recorded as under :

"Mr. Nishant R. Katneshwarkar, learned counsel appearing on behalf of the petitioner has submitted that apart from the fact that the earlier judgment and order passed by the Armed Forces Tribunal (AFT) in Transfer Application. No. 385 of 2009 dated 02.05.2013 has been affirmed by this Court and the Appeal has been dismissed, even when another O.A. was filed being O.A. No. 35 of 2016 for a declaration that the applicant in that case was entitled to continue in the service of the Indian Air Force in the rank of Group Captain F(P) till the completion of 57 years at par with Group Captains in Ground Duty Branch of the Air Force, it was submitted that the recommendation made by the Air Headquarters is pending before the Ministry of Defence and the AFT directed the Ministry of Defence to consider and take a decision on the matter, after proper application of mind to the recommendation made by the Air Headquarters in this regard and the AFT directed to take an appropriate decision within a period of four months (vide order dated 11.04.2017), no further decision has been taken till date by the Ministry of Defence and the resultant effect is that every month 5 to 6 Group Captains (Time-Scale) F(P) are retiring and/or superannuating at the age of 54 years solely because of the inaction on the part of the Ministry of Defence.

Issue notice, returnable on 13.05.2022.

Dasti, in addition, is permitted.

It will be open for the counsel for the petitioner to serve one advance copy in the Central Agency Section within a period of three days from today."

A counter is filed on behalf of the Respondent No. 1 - Ministry of Defence, Union of India, stating that as such there is no inaction on the part of the Union Government in not taking any decision on the retirement age. An order dated 10.04.2018 issued by the Ministry of Defence, Government of India is placed on record by which prayer to enhance the age of retirement from 54 to 57 years has been declined.

Shri Nishant R. Katneshwarkar has submitted that, in fact,
contd..

earlier order dated 10.04.2018 was not brought to the notice of any of the Officers and though demanded under the RTI, the same was not supplied. Be that it may, the fact remains that a conscious decision has been taken by the Ministry of Defence on 10.04.2018 not to enhance the age of retirement from 54 to 57 years so far as the Group Captains (Time Scale) F(P&N) are concerned.

In that view of the matter, Shri Nishant R. Katneshwarkar, under the instructions from the petitioner, who is personally present in the Court, seeks permissions to withdraw the present petition with a liberty in favour of the petitioner to challenge decision dated 10.04.2018 before the Armed Forces Tribunal, Principal Bench, New Delhi. If such an application is made before the AFT within a period of four weeks from today, the same be considered in accordance with law and on its own merits without in any way being influenced by the withdrawal of the present Writ Petition and looking to the controversy, we request learned AFT to finally decide and dispose of such an application within a period of six months from the date of filing of such an application.

With this, the present Writ Petition stands dismissed as withdrawn with above liberty.

Pending application(s), if any, shall stand disposed of.

.....J.
[M.R. SHAH]

.....J.
[B.V. NAGARATHNA]

NEW DELHI
JULY 20, 2022

ITEM NO.15

COURT NO.11

SECTION PIL-W

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

Writ Petition (Civil) No. 243/2022

GROUP CAPTAIN VIKAS SAREEN

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(IA No. 80928/2022 - AMENDMENT OF THE PETITION
IA No. 50440/2022 - STAY APPLICATION)

Date : 20-07-2022 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.R. SHAH
HON'BLE MRS. JUSTICE B.V. NAGARATHNA

For Petitioner(s) Mr. Nishant Ramakantrao Katneshwarkar, AOR

For Respondent(s) Mr. Sanjay Jain, ASG
Mr. R. Balasubramanian, Sr. Adv.
Ms. Neela Kedar Gokhale, Adv.
Mr. Mohammed Akhil, Adv.
Ms. Priyanka Das, Adv.
Mr. Arvind Kumar Sharma, AOR

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

The present Writ Petition stands dismissed as withdrawn
in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(NEETU SACHDEVA)
ASTT. REGISTRAR-cum-PS

(NISHA TRIPATHI)
ASSISTANT REGISTRAR

(signed order is placed on the file)