

COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

19.

MA 1779/2020 in OA 1001/2020

In the matter of :

Nb Sub Dinesh Kumar

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. V.S. Kadian with Mr. Udghosh Thakran,
Advocates

For Respondents : Mr. J.S. Rawat, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

O R D E R
23.10.2020

This application has been filed in a pending Original Application bearing O.A. No. 1001 of 2020 and the prayer made in the application is to stay the discharge/retirement of the applicant which is on 31.10.2020.

2. This Miscellaneous Application seeking stay has been filed, primarily on the ground that the Policy for grant of extension by two years has not been complied with inspite of the recommendations made and various other factors pointed out in the application, the prayer for extension has not been properly considered. That apart, it was argued that even the Statutory Complaint filed by the applicant has not been decided in accordance to the requirement of the provisions of law.

3. We are of the considered view that this application is wholly misconceived and cannot be considered for the reasons which we detail hereinunder.

4. Original Application No. 1001 of 2020 is still pending and the matter is listed for further hearing on 24.12.2020. In the Original Application filed, prayer made by the applicant is to set aside the order passed by the Commanding Officer, whereby case of the applicant for grant of extension has been rejected. While filing the Original Application, in Para 9, a prayer was made that stay of the retirement of the applicant may be granted.

5. The matter was heard by a Coordinate Bench of this Tribunal on 27.08.2020 and, after hearing the applicant's counsel and that of the respondents, a detailed order was passed, which is reproduced hereinunder :

“Vide this OA, the applicant seeks quashing of the order of the Commanding Officer for not recommending grant of extension to the applicant as published vide Part-II of the order dated 17.05.2019 besides other reliefs. By way of interim relief, he is seeking his stay of retirement.

It is pointed out by Maj Sonali Tiwari that although the impugned order was passed way back on 17.05.2019. However, the statutory complaint was made by the applicant only on 04.03.2020 which is beyond the statutory

period of six months. She will enquire about the fate of the statutory complaint filed by the applicant.

It is further submitted that since the applicant was not found suitable, therefore, further extension has not been recommended. Keeping in view the aforesaid facts, since the applicant himself has delayed in approaching the competent authority by filing the statutory complaint, therefore, at this stage, we do not deem it appropriate to pass any interim order in favour of the applicant.

Heard. Admit.

Issue notice to the respondents in OA.

Notice is accepted by Mr. J.S. Rawat, Advocate on behalf of the respondents. He seeks time to file counter affidavit. Same be filed within four weeks with an advance copy to counsel for the applicant.

List on 15.10.2020 before the Principal Registrar for completion of pleadings.”

6. In view of the aforesaid order passed, we find that the prayer for stay has been rejected by a Coordinate Bench of this Tribunal while admitting the Original Application. Once after hearing the application for staying the same has been rejected by a Coordinate Bench, in our considered view, present application making the same prayer on the grounds, is not maintainable. We, therefore, dismiss the application.

7. Learned counsel for the applicant argued that, because the respondents have not decided his Statutory Complaint, therefore, the applicant has a right for seeking the interim relief/stay. In our considered view, this submission is wholly misconceived and the prayer cannot be accepted. Once after hearing the all concerned, the application for interim relief has been rejected. It operates as *res judicata* and we do not have the jurisdiction to re-entertain the application again on the same ground. If the applicant has any grievance against not granting prayer for stay, then he should have challenged the order passed on 27.08.2020 before an appropriate higher forum and not filed this application seeking the same interim relief again which is already rejected by a Coordinate Bench of this Tribunal.

Copy of this order be given ***'Dasti'***.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

**[LT GEN P.M. HARIZ]
MEMBER (A)**

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