

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

60.

MA 3480/2023 IN OA 1438/2021

Maj S Eswari ... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. S S Pandey, Advocate
For Respondents : Mr. Satya Ranjan Swain, Advocate
Maj Luv Kumar, OIC, Legal Cell

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN C. P. MOHANTY, MEMBER (A)

O R D E R
06.11.2023

MA 3480/2023

Vide order passed on 19th April, 2023 in Para 49 the following directions were issued by this Tribunal.

“49. In light of the discussions made above, we allow the present OAs and pass following directions:

- a) Court of Inquiry against the applicants is set aside and any further disciplinary proceedings by the Respondents on the basis of such Court of Inquiry, including the DV Ban on the Applicant No.2 are quashed herein, being barred by the limitation under Section 122 of the Army Act, 1950.*
- b) Results pertaining to the grant of Permanent Commission shall be declassified and if selected, original seniority of applicants shall be restored and they shall be promoted accordingly along with the associated service and further pensionary benefits as applicable.*
- c) All ACRs/CRs of the applicants for the period of inquiry and subsequently shall be reviewed accordingly by the Competent Authority and applicants shall be considered afresh on the basis of reviewed ACRs/CRs, if not empanelled for Permanent Commission earlier.*

d) All directions shall be complied by the respondents within four months failing which action would be taken by this Court.

2. When the directions issued were not complied within the time limit granted, this execution application has been filed by the applicant and on 25th August, 2023 this Tribunal took serious note of the inaction on the part of the respondents in complying with the directions and directed them to file a compliance report by 29th September, 2023.

3. On 29th September, 2023 when the matter was taken up, we were informed that aggrieved by the order passed by this Tribunal on 19th April, 2023, the matter was taken up in a SLP before the Hon'ble Supreme Court and we were also informed that the Hon'ble Supreme Court dismissed the SLP filed on 22nd September, 2023, i.e., seven days before the date of hearing, i.e., 29th September, 2023. Considering the fact that the SLP was only dismissed on 22nd September, 2023, we granted time till today to the respondents to comply with the order.

4. Today when the matter is taken up for consideration, we are informed that the matter has now been referred to the Ministry of Law and Justice for taking action in the matter. We don't understand as to why such a procedure is being followed by the respondents. Once on account of the dismissal of the SLP, the order passed by us on 19th April, 2023 has been upheld by the Hon'ble Supreme Court. The respondents were duty bound to comply with

the order and submit a compliance report. Instead they have come out with a peculiar submission that the matter is pending with the Ministry of Law and Justice. We don't understand as to what action is now required to be taken. Even if, for a moment, it is assumed that the respondents want to file a Curative Petition before the Hon'ble Supreme Court they should have done it within 30 days of the passing of the order and that period is also over now.

5. Today during the course of the hearing, Shri S.S. Pandey, learned counsel for the applicant invites our attention to an order passed by the Hon'ble Supreme Court in the case of *State of U.P. and Others Vs. Sabha Narain and Others* SLP (c) Diary NO. 25743 of 2020 (decided on 22nd January, 2021) wherein the following observations have been made by the Hon'ble Supreme Court:-

*3. We have repeatedly discouraged State Governments and public authorities in adopting an approach that they can walk in to the Supreme Court as and when they please ignoring the period of limitation prescribed by the statutes, as if the Limitation statute does not apply to them. In this behalf, suffice to refer to our judgments in *State of M.P. v. Bherulal and State of Odisha v. Sunanda Mahakuda*. The leeway which was given to the Government/public authorities on account of innate inefficiencies was the result of certain orders of this Court which came at the time when technology had not advanced and thus, greater indulgence was shown. This position is no more prevalent and the current legal position has been elucidated by the judgment of this Court in *Postmaster General v. Living Media India Ltd*. Despite this, there seems to be little change in the approach of the Government and public authorities.*

4. We have also categorized such kind of cases as "certificate cases" filed with the only object to obtain a quietus from the Supreme Court on the ground that nothing could be done because the highest Court has

dismissed the appeal. The objective is to complete a mere formality and save the skin of the officers who may be in default in following the due process or may have done it deliberately. We have deprecated such practice and process and we do so again. We refuse to grant such certificates and if the Government/ public authorities suffer losses, it is time when officers concerned responsible for the same, bear the consequences. The irony, emphasized by us repeatedly, is that no action is ever taken against the officers and if the Court pushes it, some mild warning is all that happens.

5. Looking to the period of delay and the casual manner in which the application has been worded, we consider appropriate to imposed costs on the petitioner(s) of Rs 25,000 for wastage of judicial time which has its own value and the same be deposited with the Supreme Court Advocates-on-Record Welfare Fund within four weeks. The amount be recovered from the officers responsible for the delay in filing the special leave petition and a certificate of recovery for the said amount be also filed in this Court within the same period of time.

6. Taking note of all the circumstances, we issue notice to the officers concerned, who are responsible for dealing with the matter, as to why costs, as directed by the Hon'ble Supreme Court in the matter referred to hereinabove, should not be imposed upon them and a reference made of the issue for initiating Contempt of Court action against the officers concerned by making a reference to the Chief Justice, Delhi High Court for initiating Contempt of Court action.

7. Respondents are directed to supply the names, designations and particulars of the officers, who are responsible for the delay so that a reference can be made to the Delhi High Court for initiating action against them.

8. List the matter on **29th November, 2023**.
9. A copy of this order be provided '***DASTI***' to learned counsel for both the parties.

[RAJENDRA MENON]
CHAIRPERSON

[C. P. MOHANTY]
MEMBER (A)

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