

COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI
(Through Virtual Hearing)

10.

OA 360/2021

Maj Akanksha Sharma	Applicant
VERSUS		
Union of India and Ors.	Respondents

For Applicant	:	Mr. I.S. Singh, Advocate
For Respondents	:	Mr. Harish V. Shankar, Advocate for RR 1-3

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

ORDER
26.02.2021

Issue notice. Mr. Harish V. Shankar, learned counsel appearing for the respondents No.1 to 3, accepts notice. On filing of requisites within one week, notice shall also be issued to respondent No.4. Let counter affidavit/objection be filed within four weeks. Rejoinder, if any, may be filed within two weeks thereafter.

2. The applicant, a Short Service Commissioned Women Officer, belonging to Army Service Corps (ASC), by the impugned order, has been denied extension of service.

3. Learned counsel for the applicant prays for an interim relief and argued that the applicant's case for grant of Permanent Commission/extension of service has been incorrectly rejected, the proceedings of the No.5 Selection Board held in December 2020 are unsustainable, the applicant's

service record is unblemished and she challenges the action of the respondents not granting her extension of service so also making certain adverse entries in the Confidential Reports. Learned counsel for the applicant invited our attention to certain orders passed not only by this Tribunal but also by the Delhi High Court filed as **Annexures A-13 to 15** to say that as the statutory complaint of the applicant is pending before the Competent Authority and till the Statutory Complaint is not decided, the applicant should not be discharged from service.

4. Learned counsel for the respondents vehemently refuted the aforesaid contentions and argued that once the Selection Committee has scrutinized the case of the applicant and the decision of the Competent Authority is based on the proceedings of the Selection Committee, no prima facie case for grant of interim relief is made out. He also emphasized that the service record of the applicant was evaluated by the Selection Committee and without considering the matter on merit, at this stage, grant of interim relief will cause serious injustice to the respondents.

5. We have heard learned counsel for the parties and we find that the case of the applicant for extension of service was placed before the No.5 Selection Board which was held sometime in November/December, 2020 and the Board did not recommend the case of the applicant for extension of service on account of certain adverse report so also on scrutiny of service

record of the applicant. Merely, because the Statutory Complaint filed by the applicant is pending before the Competent Authority, once the competent Selection Board has not recommended the case of the applicant, we cannot, ignoring the same, grant any interim relief to the applicant. Ultimately, after considering the entire material if we find that the consideration by the Selection Board has not been done properly in accordance with the requirement of law, the applicant can be put back into service and all benefits granted to her.

6. Accordingly, in the facts and circumstances of the case we see no reason to grant any interim relief. As far as interim orders passed in certain matters referred to before us are concerned, these orders only indicate that Statutory Complaints filed by the applicants in those cases were pending and pending finalization of the Statutory Complaints certain interim protection was granted. A perusal of the order passed by the Delhi High Court (Annexure A-13) in Writ Petition © No.3216/2020 shows that invoking the jurisdiction of the High Court under Article 226 of the Constitution, the petitioner who was invalided on medical grounds challenged the action and the High Court finding the Statutory Complaint to be pending gave certain protection till the disposal of the Statutory Complaint. Similarly, in OA No.332/2018 an interim order was passed by a Coordinate Bench of this Tribunal wherein it is only indicated that a Statutory Complaint is pending and after issuing notice

some interim protection was granted. There is nothing in this order to indicate as to on what reasons the interim protection was granted. That apart, it is well settled principle of law that granting or rejecting a prayer for interim stay is not a binding precedent. Similarly, the order passed by this Tribunal in OA No.2053/2017 (Annexure A-15), in our considered view, will also not help the applicant as neither the facts nor any other exonerate circumstance warranting grant of interim protection is indicated in the order whereas in the case before us the applicant is a Short Service Commissioned Women Officer and as per the requirement of law laid down by the Hon'ble Supreme Court her case for grant of Permanent Commission was considered by an appropriate Selection Board. The Selection Board has not recommended her case for grant of Permanent Commission as well as extension of service and once a competent Board has rejected the claim for grant of Permanent Commission or extension then as an interim measure, we see no reason to grant any interim stay. Prima facie, a duly constituted Selection Committee having rejected the claim of the applicant, no stay can be granted. That apart, ultimately after notice to the respondents and hearing them if we find that the Selection Board has improperly rejected the case of the applicant then all consequential benefits can always be granted and there being no irreparable loss, no interim protection is called for.

7. Accordingly, at this stage finding no case for grant of any interim relief, the prayed for interim relief stands rejected.
8. List the matter on 23rd April, 2021.
9. A copy of this order be provided **DASTI** to learned counsel for the parties.

(RAJENDRA MENON)
CHAIRPERSON

(P.M. HARIZ)
MEMBER (A)

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