

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

(Supplementary) 1.

OA 1650/2023

Cdr Priyanka Choudhary

... Applicant

Versus

Union of India &Ors.

... Respondents

For Applicant : Shri S S Pandey, Advocate

For Respondents : Shri Harish V Shankar, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

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

O R D E R

04.07.2023

Heard on the question of admission. Issue notice to the respondents on the merits. Counter affidavit be filed within six weeks and rejoinder, if any, be filed within two weeks thereafter.

2. List thereafter for final hearing on **26.09.2023** for completion of the pleadings.

3. Learned counsel for the parties is also heard on the question of interim relief. The applicant wants grant of Permanent Commission and claims the benefit of Permanent Commission on account of the law laid down by the Hon'ble Supreme Court in various cases like **UoI & Ors. Vs. Lt Cdr Annie Nagaraj & Ors.** and **Babita Punia & Ors.** That

apart, the applicant also claims interim relief and wants stay of the impugned order dated 19.06.2023 and it is prayed that discharge of the applicant in pursuance to the aforesaid order be stayed. The applicant is claiming stay of discharge based on certain protection granted to other similarly situated employees who had filed petition before the Hon'ble Supreme Court in Civil Appeal Nos. 841-843 /2022 **Cdr Amit Kumar Sharma v. UoI & Ors.** and it is stated that the applicant is also similarly situated and should be entitled for grant of similar interim protection. Shri S. S. Pandey took us through the facts on record, the manner in which the case of the applicant was considered and tried to demonstrate that the claim of the applicant for grant of Permanent Commission has not been considered in accordance with the mandate of the Hon'ble Supreme Court in various cases and in the matter of interim relief claims parity with orders referred to herein above.

4. Per contra, Shri Harish V. Shankar invites our attention to Para 32 and 33 of the final order passed by the Hon'ble Supreme Court in the case of Amit Kumar Sharma (supra) which reads as under:

“32. We accordingly allow the appeals and set aside the impugned judgment of the AFT. The OAs corresponding to the appeals which are filed before this Court are restored for fresh adjudication by the AFT. During the pendency of these proceedings, as already noted, some of the officers in this batch of appeals including some interveners have continued in service as a result of the protective orders operating in their favour while the tenure of one officer is to end in December 2022. We direct that the officers who are protected by interim orders of this Court shall continue to have the benefit of those orders pending the disposal of the proceedings before the AFT and thereafter for a period of eight weeks from the date of the decision of the AFT should it become necessary for them to assail the judgment before this Court in appeal. The officer whose tenure is to end in December 2022 shall also be entitled to the benefit of the same protection.

33. We request the AFT to dispose of the OAs which have been restored to the file of the AFT expeditiously and preferably by the end of February 2023.

5. He further argues that the applicant did not approach the Hon’ble Supreme Court or this Tribunal on time and now wants to take benefit of an order which is applicable only to such persons who had approached the Court in time. That apart, it is argued by the counsel for the respondents that after the orders were passed by the Hon’ble Supreme Court on 20.10.2022 in the case of Amit Kumar Sharma (supra) the applicant did not seek grant of any benefit on the contrary, on 23.11.2022, the applicant applied for grant of premature retirement did not claim permanent commission, her request for Permanent Commission was put to the process of premature retirement benefit which is now concluded on

31.06.2022 and after the premature retirement exercise is over the applicant is liable to be discharged. It was further submitted that after having given the option for premature retirement, the applicant participated in the process of consideration for grant of Permanent Commission. The case of the applicant was considered on two occasions for grant of Permanent Commission but as the applicant scored very low on merit in the selection process, she is not entitled for Permanent Commission. Learned counsel for the respondents invites our attention to the orders passed by Coordinate Benches of this Tribunal in OA 1001/2018 **Lt Cdr Ashish v. UoI & Ors.**, order dated 03.08.2022 and **Lt Cdr Bibin C Varghese v. UoI & Ors.** order dated 25.04.2022 wherein on somewhat similar situation prayer for interim relief was rejected to officers who had not been granted Permanent Commission. The learned counsel argues that the applicant having sought for premature retirement and in spite of having been considered by the appropriate Selection Board on two occasions and having not met the merit criteria as laid down at this stage no interim relief can be granted.

6. Prima facie on going through the material, we are of the view that in this case the applicant did not approach the Court in time. On the contrary sought for premature retirement, participated in the premature retirement exercise and having failed in the selection process, is now challenging the action. Grant of interim relief is based on the principles of existence of prima facie case, balance of convenience and irreparable loss. Once in the facts and circumstances of the present case, we find that a prima facie case does not exist in favour of the applicant, once the applicant is not recommended by the Selection Boards permitting a candidate who is not recommended for Permanent Commission to continue in service will result in an ineligible candidate being permitted to work, this tilts the balance of convenience in favour of the respondents. That apart, ultimately, after hearing all concerned and going through the records, in case we find that the applicant is entitled for grant of Permanent Commission the clock can be put back and the applicant granted all consequential reliefs. That apart, there is no irreparable loss also to the applicant and taking note of all these circumstances, we find no case is made out for grant of

any interim reliefs. The prayer for interim relief stands rejected.

7. A copy of this order be provided DASTI to learned counsel for both the parties.

**[RAJENDRA MENON]
CHAIRPERSON**

**[C P MOHANTY]
MEMBER (A)**

/jyoti/